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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 28, 30, 87, 180, and 3282

[Docket No. FR–6375–F–01]

Adjustment of Civil Monetary Penalty Amounts for 2023

AGENCY: Office of the General Counsel, HUD.

ACTION: Final rule.

SUMMARY: This rule provides for 2023 inflation adjustments of civil monetary penalty amounts required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). This rule also revises HUD's policy and applies annually adjusted penalty amounts to the date the penalty is assessed after the effective date of the rule (if the violation occurred after the enactment of the 2015 Act).

DATES: This final rule is effective March 17, 2023.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20024; telephone number 202–402–5138 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Pub. L. 114–74, Sec. 701), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), requires agencies to make annual adjustments to civil monetary penalty (CMP) amounts for inflation ''notwithstanding section 553 of title 5, United States Code.'' Section 553 refers to the Administrative Procedure Act, which provides for advance notice and public comment during the rulemaking process. However, as explained in Section III below, HUD has determined that advance notice and public comment on this final rule is unnecessary.

This annual adjustment is for 2023. The annual adjustment is based on the percent change between the U.S. Department of Labor's Consumer Price Index for All Urban Consumers (''CPI–U'') for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2023 is 1.07745.[1] Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.[2]

II. This Final Rule

A. Required 2023 Inflation Adjustments

This final rule makes the required 2023 inflation adjustment of HUD's civil money penalty amounts. The 2023 increases apply to penalties assessed on or after this rule's effective date. HUD provides a table showing how, for each component, the penalties are being adjusted for 2023 pursuant to the 2015 Act. In the first column (''Description''), HUD provides a description of the penalty. In the second column (''Statutory Citation''), HUD provides the United States Code statutory citation providing for the penalty. In the third column (''Regulatory Citation''), HUD provides the Code of Federal Regulations citation under Title 24 for the penalty. In the fourth column (''Previous Amount''), HUD provides the amount of the penalty pursuant to the rule implementing the 2022 adjustment (87 FR 24418, April 26, 2022). In the fifth column (''2023 Adjusted Amount''), HUD lists the penalty after applying the 2023 inflation adjustment.

Description	Statutory citation	Regulatory citation (24 CFR)	Previous amount	2023 Adjusted amount
False Claims	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(1)).	§ 28.10(a)	$12,537	$13,508.
False Statements	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(2)).	§ 28.10(b)	$12,537	$13,508.
Advance Disclosure of Funding.	Department of Housing and Urban Development Act (42 U.S.C. 3537a(c)).	§ 30.20	$22,021	$23,727.
Disclosure of Subsidy Layering.	Department of Housing and Urban Development Act (42 U.S.C. 3545(f)).	§ 30.25	$22,021	$23,727.
FHA Mortgagees and Lenders Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	§ 30.35	Per Violation: $11,011 Per Year: $2,202,123	Per Violation: $11,864. Per Year: $2,372,677.
Other FHA Participants Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	§ 30.36	Per Violation: $11,011 Per Year: $2,202,123	Per Violation: $11,864. Per Year: $2,372,677.

[1] Office of Management and Budget, M–23–05–, Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. *https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf*). (October 2022 CPI–U (298.012)/October 2021 CPI–U (276.589) = 1.07745.)

[2] 28 U.S.C. 2461 note.

Description	Statutory citation	Regulatory citation (24 CFR)	Previous amount	2023 Adjusted amount
Indian Home Loan Guarantee Lender or Holder Violations.	Housing Community Development Act of 1992 (12 U.S.C. 1715z–13a(g)(2)).	§ 30.40	Per Violation: $11,011 ..... Per Year: $2,202,123	Per Violation: $11,864. Per Year: $2,372,677.
Multifamily & Section 202 or 811 Owners Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–15(c)(2)).	§ 30.45	$55,052	$59,316.
Ginnie Mae Issuers & Custodians Violations.	HUD Reform Act of 1989 (12 U.S.C. 1723i(a)).	§ 30.50	Per Violation: $11,011 ..... Per Year: $2,202,123	Per Violation: $11,864. Per Year: $2,372,677.
Title I Broker & Dealers Violations.	HUD Reform Act of 1989 (12 U.S.C. 1703).	§ 30.60	Per Violation: $11,011 ..... Per Year: $2,202,123	Per Violation: $11,864. Per Year: $2,372,677.
Lead Disclosure Violation ..	Title X—Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d(b)(1)).	§ 30.65	$19,507	$21,018.
Section 8 Owners Violations.	Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437z–1(b)(2)).	§ 30.68	$42,788	$46,102.
Lobbying Violation	The Lobbying Disclosure Act of 1995 (31 U.S.C. 1352).	§ 87.400	Min: $22,021 ..... Max: $220,213	Min: $23,727. Max: $237,268.
Fair Housing Act Civil Penalties.	Fair Housing Act (42 U.S.C. 3612(g)(3))	§ 180.671(a)	No Priors: $23,011 ..... One Prior: $57,527 ..... Two or More Priors: $115,054.	No Priors: $24,793. One Prior: $61,982. Two or More Priors: $123,965.
Manufactured Housing Regulations Violation.	Housing Community Development Act of 1974 (42 U.S.C. 5410).	§ 3282.10 ...	Per Violation: $3,198 ..... Per Year: $3,997,550	Per Violation: $3,446. Per Year: $4,307,160.

B. HUD's Policy Change: Applying Adjusted Penalties to Violations Assessed After the Effective Date of the Rule

This final rule also revises HUD's policy to apply annually adjusted penalties to violations assessed after the effective date of each annual adjustment (if the violation occurred after the enactment of the 2015 Act). Since the enactment of the 2015 Act, HUD has not applied the adjustments retroactively and provided that the inflation-adjusted penalty amounts applied to violations occurring on or after the rule's effective date. On September 21, 2022, HUD published a notice entitled, ''Adjustment of Civil Monetary Penalty Amounts: Request for Comments'' (87 FR 57655) which announced that HUD was considering revising its policy regarding how it implements the annual inflation-adjusted civil money penalties. Specifically, HUD stated that it was considering applying the adjusted penalties to the date that the penalty was assessed rather than to the date the violation occurred. HUD explained its consideration to revise the regulation came after revisiting Section 6 of the 2015 Act, the Office of Management and Budget guidance (M–22–07), and a review of the penalty adjustments published by other Federal agencies. Through this notice of request for information, HUD sought public input on the impact of applying increased penalty amounts on the date the penalty is assessed rather than the date of the violation.

In response to HUD's request for comment, HUD received one comment signed by 25 fair housing organizations. The comment supported HUD's proposal to apply increased penalty amounts to the date the penalty is assessed. The comment stated that the policy change would bring HUD in line with other Federal agencies which tie penalties to the date of assessment rather than the date of violation. The comment asserted that revising HUD's policy regarding when it imposes adjusted penalty amounts would help deter violations of the Fair Housing Act. Additionally, the organizations pointed out that a lengthy period of time may pass between when a violation occurs and when damages and civil penalties are awarded. The comment explained that the time between these events could be substantial since after a violation it may take time for a complaint to be filed, and then an investigation is conducted, a determination is issued, and a hearing is scheduled and held before civil penalties are awarded. The organizations also stated that when penalties are assessed as of the date of the violation, it defeats Congressional purpose: there is less of a deterrent effect because the amount is ''outdated'' and does not keep up with the cost of living.

The comment letter also stated that assessing appropriate civil penalties in fair housing cases should not be underestimated, as it emphasizes the importance of complying with fair housing laws. Lastly, ''to deter egregious behavior, to respond to the nature of the violation, and to protect the public interest in assuring that discriminatory conduct is not repeated,'' the fair housing organizations believe it is important for HUD to institute a process that will permit the maximum inflation adjustments of civil penalty amounts when the penalty is determined justified and assessed.

In considering the public comment and HUD's consideration and experience in implementing inflation-adjusted penalty amounts, HUD is announcing that it will apply the inflation-adjusted penalty amounts on the date the penalty is assessed rather than the date the violation occurred. HUD is making this change after revisiting Section 6 of the 2015 Act which provides that an ''increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.'' (28 U.S.C. 2461 note.) OMB guidance (M–22–07 and M–23–05), which provides the annual inflation multiplier also provides that the adjusted penalty applies to ''penalties assessed after the effective date of the applicable adjustment.'' Lastly, a review of the penalty adjustments published by other Federal agencies suggests that they apply the inflation-adjusted penalty amounts to penalties assessed after the date of the increase as long as the violation occurred after the enactment of the 2015 Act.

III. Justification for Final Rulemaking for the 2023 Adjustments

HUD generally publishes regulations for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (see 24 CFR 10.1). As discussed, this final rule makes the required 2023 inflation adjustment, which HUD does not have discretion to change, and a change to HUD's policy to apply increased penalty amounts to the date the violation is assessed, which HUD issued a request for public comment for on September 21, 2022. Moreover, the 2015 Act specifies that a delay in the effective date under the Administrative Procedure Act is not required for annual adjustments under the 2015 Act. HUD has determined, therefore, that it is unnecessary to delay the effectiveness of the 2023 inflation adjustments to solicit public comments.

Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that any HUD regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days. This rule does not authorize the imposition of a civil money penalty—rather, it makes a standard inflation adjustment to penalties that were previously authorized. As noted above, the 2023 inflation adjustments are made in accordance with a statutorily prescribed formula that does not provide for agency discretion.

Accordingly, a delay in the effectiveness of the 2023 inflation adjustments in order to provide the public with an opportunity to comment is unnecessary because the 2015 Act exempts the adjustments from the need for delay, the rule does not authorize the imposition of a civil money penalty or alter the requirements in any way, and, in any event, HUD would not have the discretion to make changes as a result of any comments. Additionally, regarding revising HUD's policy regarding determining implementing the inflation-adjusted penalties, HUD published a request for public comment on applying annually adjusted penalty amounts to violations assessed after the effective date of the rule (if the violation occurred after the enactment of the 2015 Act).

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review) (58 FR 51735), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) (76 FR 3821) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. As discussed above in this preamble, this final rule adjusts existing civil monetary penalties for inflation by a statutorily required amount.

HUD determined that this rule was not significant under Executive Order 12866 and Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) [3] requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.[4] However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') (64 FR 43255) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgage insurance, Penalties.

24 CFR Part 87

Government contracts, Government employees, Grant programs, Loan programs, Lobbying, Penalties,

[3] 2 U.S.C. 1532.

[4] 2 U.S.C. 1535.

Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 28, 30, 87, 180, and 3282 as follows:

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 28 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812; 42 U.S.C. 3535(d).

■ 2. In § 28.10, revise paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) * * *

(1) A civil penalty of not more than $13,508 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

* * * * *

(b) * * *

(1) A civil penalty of not more than $13,508 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 3. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 1 note and 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 4. In § 30.20, revise paragraph (b) to read as follows:

§ 30.20 Ethical violations by HUD employees.

* * * * *

(b) *Maximum penalty.* The maximum penalty is $23,727 for each violation.

■ 5. In § 30.25, revise paragraph (b) to read as follows:

§ 30.25 Violations by applicants for assistance.

* * * * *

(b) *Maximum penalty.* The maximum penalty is $23,727 for each violation.

■ 6. In § 30.35, revise the first sentence in paragraph (c)(1) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(c)(1) * * * The maximum penalty is $11,864 for each violation, up to a limit of $2,372,677 for all violations committed during any one-year period. * * *

* * * * *

■ 7. In § 30.36, revise the first sentence in paragraph (c) to read as follows:

§ 30.36 Other participants in FHA programs.

* * * * *

(c) * * * The maximum penalty is $11,864 for each violation, up to a limit of $2,372,677 for all violations committed during any one-year period. * * *

■ 8. In § 30.40, revise the first sentence in paragraph (c) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(c) * * * The maximum penalty is $11,864 for each violation, up to a limit of $2,372,677 for all violations committed during any one-year period. * * *

■ 9. In § 30.45, revise paragraph (g) to read as follows:

§ 30.45 Multifamily and section 202 or 811 mortgagors.

* * * * *

(g) *Maximum penalty.* The maximum penalty for each violation under paragraphs (c) and (f) of this section is $59,316.

* * * * *

■ 10. In § 30.50, revise the first sentence in paragraph (c) to read as follows:

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) * * * The maximum penalty is $11,864 for each violation, up to a limit of $2,372,677 during any one-year period. * * *

■ 11. In § 30.60, revise paragraph (c) to read as follows:

§ 30.60 Dealers or sponsored third-party originators.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $11,864 for each violation, up to a limit for any particular person of $2,372,677 during any one-year period.

■ 12. In § 30.65, revise paragraph (b) to read as follows:

§ 30.65 Failure to disclose lead-based paint hazards.

* * * * *

(b) *Amount of penalty.* The maximum penalty is $21,018 for each violation.

■ 13. In § 30.68, revise paragraph (c) to read as follows:

§ 30.68 Section 8 owners.

* * * * *

(c) *Maximum penalty.* The maximum penalty for each violation under this section is $46,102.

* * * * *

PART 87—NEW RESTRICTIONS ON LOBBYING

■ 14. The authority citation for part 87 continues to read as follows:

Authority: 28 U.S.C. 1 note; 31 U.S.C. 1352; 42 U.S.C. 3535(d).

■ 15. In § 87.400, revise paragraphs (a), (b), and (e) to read as follows:

§ 87.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $23,727 and not more than $237,268 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B to this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $23,727 and not more than $237,268 for each such failure.

* * * * *

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $23,727, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $23,727 and $237,268 as determined by the agency head or his or her designee.

* * * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

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

Authority: 28 U.S.C. 1 note; 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

■ 17. In § 180.671, revise paragraphs (a)(1) through (3) to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(1) $24,793, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local governmental agency, to have committed any prior discriminatory housing practice.

(2) $61,982, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the 5-year period preceding the date of filing of the charge.

(3) $123,965, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the 7-year period preceding the date of filing of the charge.

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 18. The authority citation for part 3282 continues to read as follows:

Authority: 15 U.S.C. 2967; 42 U.S.C. 3535(d), 5403, and 5424.

■ 19. Revise § 3282.10 to read as follows:

§ 3282.10 Civil and criminal penalties.

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum amount of penalties imposed under section 611 of the Act shall be $3,446 for each violation, up to a maximum of $4,307,160 for any related series of violations occurring within one year from the date of the first violation.

Damon Smith,

General Counsel.

[FR Doc. 2023–03142 Filed 2–14–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM–2023–0001]

RIN 1010–AE17

2023 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements the 2023 inflation adjustments to the maximum daily civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations for violations of the Outer Continental Shelf Lands Act (OCSLA) and the Oil Pollution Act of 1990 (OPA), pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Improvements Act) and relevant Office of Management and Budget (OMB) guidance. The 2023 adjustment multiplier of 1.07745 accounts for 1 year of inflation from October 2021 through October 2022.

DATES: This rule is effective on February 15, 2023.

FOR FURTHER INFORMATION CONTACT: Questions regarding the inflation adjustment methodology or amount should be directed to Martin Heinze, Economics Division, BOEM, at *martin.heinze@boem.gov* or at (703) 787–1010. Questions regarding the timing of this adjustment or the applicability of the regulations should be directed to Satrina Lord, Office of Regulations, BOEM at *satrina.lord@boem.gov* or at (703) 787–1250.

SUPPLEMENTARY INFORMATION:

I. Legal Authority
II. Background and Purpose
III. Calculation of the 2023 Adjustments
IV. Statutory and Executive Order Reviews
A. Statutes
1. National Environmental Policy Act
2. Regulatory Flexibility Act
3. Paperwork Reduction Act
4. Unfunded Mandates Reform Act
5. Small Business Regulatory Enforcement Fairness Act
6. Congressional Review Act
B. Executive Orders (E.O.)
1. Governmental Actions and Interference With Constitutionally Protected Property Rights (E.O. 12630)
2. Regulatory Planning and Review (E.O. 12866); Improving Regulation and Regulatory Review (E.O. 13563)
3. Civil Justice Reform (E.O. 12988)
4. Federalism (E.O. 13132)
5. Consultation and Coordination With Indian Tribal Governments (E.O. 13175)
6. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

I. Legal Authority

OCSLA authorizes the Secretary of the Interior (the Secretary) to impose a daily civil monetary penalty for a violation of OCSLA or its implementing regulations, leases, permits, or orders. It also directs the Secretary to adjust the maximum penalty at least every 3 years to reflect any inflation increase in the Consumer Price Index. 43 U.S.C. 1350(b)(1). Similarly, OPA authorizes civil monetary penalties for failure to comply with OPA's financial responsibility provisions or their implementing regulations. 33 U.S.C. 2716a(a). OPA does not include a maximum daily civil penalty inflation adjustment provision. *Id.*

The Improvements Act [1] requires that Federal agencies publish inflation adjustments to their civil monetary penalties in the **Federal Register** not later than January 15 annually.[2] Public Law 114–74, sec. 701(b)(1). The purposes of these inflation adjustments are to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, sec. 2 (codified at 28 U.S.C. 2461 note).

II. Background and Purpose

BOEM implemented the 2022 inflation adjustment for its civil monetary penalties through a final rule entitled ''2022 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf,'' which was published in the **Federal Register**. 87 FR 15333 (March 18, 2022). That rule accounted for inflation for the 12-month period between October 2020 and October 2021.

The OMB memorandum M–23–05 [3] reiterates agency responsibilities under

[1] The Improvements Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990. *See* Public Law 101–410 (codified at 28 U.S.C. 2461 note).

[2] Under the Improvements Act, Federal agencies were required to adjust their civil monetary penalties for inflation with an initial ''catch-up'' adjustment through an interim final rulemaking in 2016 and must make subsequent inflation adjustments not later than January 15 annually, beginning in 2017. Public Law 114–74, sec. 701(b)(1).

[3] OMB Memorandum M–23–05 ''Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015'' is available at *https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf*).

the Improvements Act. Such responsibilities include identifying applicable penalties and performing the annual adjustment; publishing revisions to regulations to implement the adjustment in the **Federal Register**; applying adjusted penalty dollar amounts; and performing agency oversight of inflation adjustments.

Pursuant to the Improvements Act, this final rule implements BOEM's 2023 inflation adjustments to OCSLA and OPA maximum daily civil monetary penalties. A proposed rule is unnecessary as the Improvements Act expressly exempts annual civil penalty inflation adjustments from the Administrative Procedure Act's (APA) notice of proposed rulemaking, public comment, and standard effective date provisions. Improvements Act, Public Law 114–74, sec. 701(b)(1)(D); APA, 5 U.S.C. 553.[4]

On July 22, 2021, BOEM issued a final rule entitled ''Maximum Daily Civil Penalty Amounts for Violations of the Federal Oil and Gas Royalty Management Act'' (RIN 1010–AE08, 86 FR 38557), which amended those BOEM regulations that set maximum daily civil penalty (MDCP) amounts for violations of the Federal Oil and Gas Royalty Management Act (FOGRMA). BOEM amended its regulations to cross-reference the Office of Natural Resources Revenue (ONRR) regulations that also set MDCP amounts for FOGRMA violations. This cross-reference ensured consistency between BOEM's FOGRMA MDCP amounts and ONRR's FOGRMA MDCP amounts. It also ensured consistent compliance with the Improvements Act and related OMB guidance while reducing unnecessary duplication of effort and costs to BOEM. Because that rule established a permanent cross-reference between BOEM's FOGRMA civil penalties amounts and those of ONRR, the BOEM FOGRMA civil penalties are not being adjusted with this rulemaking (which is now confined to civil penalties unrelated to FOGRMA).

III. Calculation of the 2023 Adjustments

In accordance with the Improvements Act, BOEM determined that OCSLA and OPA maximum daily civil monetary penalties require annual inflation adjustments and issues this final rule adjusting those penalty amounts for inflation through October 2022. The annual inflation adjustment is based on the percent change between the Consumer Price Index for All Urban Consumers (CPI–U) for the October preceding the date of the adjustment and the prior year's October CPI–U. Consistent with OMB M–23–05, the 2023 inflation adjustment multiplier can be calculated by dividing the October 2022 CPI–U by the October 2021 CPI–U. In this case, October 2022 CPI–U (298.012)/October 2021 CPI–U (276.589) = 1.07745.

For 2023, BOEM multiplied the current OCSLA maximum daily civil monetary penalty of $48,862 by the multiplier 1.07745 to equal $52,646.36. The Improvements Act requires that the resulting amount then be rounded to the nearest dollar. Accordingly, the 2023 adjusted OCSLA maximum daily civil monetary penalty is $52,646.

For 2023, BOEM multiplied the current OPA maximum daily civil penalty amount of $51,796 by the multiplier 1.07745 to equal $55,807.60. The Improvements Act requires that the resulting amount then be rounded to the nearest dollar. Accordingly, the 2023 adjusted OPA maximum daily civil monetary penalty is $55,808.

The adjusted penalty amounts take effect immediately upon publication of this rule. Under the Improvements Act, the adjusted amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates the increase.

This table summarizes BOEM's 2023 maximum daily civil monetary penalties for each OCSLA and OPA violation:

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	Adjusted maximum penalty
30 CFR 550.1403 (OCSLA)	Failure to comply per day per violation	$48,862	1.07745	$52,646
30 CFR 553.51(a) (OPA)	Failure to comply per day per violation	51,796	1.07745	55,808

IV. Statutory and Executive Order Reviews

A. Statutes

1. National Environmental Policy Act

This rule does not constitute a major Federal action under the National Environmental Policy Act of 1969 (NEPA) because the civil penalty adjustments are required by law (*see* 40 CFR 1508.1(q)(1)(ii)). The Improvements Act requires BOEM to annually adjust the amounts of its civil penalties to account for inflation as measured by the Department of Labor's Consumer Price Index. Accordingly, BOEM has no discretion in the execution of the civil penalty adjustments reflected in this final rule. Because this rule is not a major Federal action, it is therefore not subject to the requirements of NEPA. Even if this were a discretionary action subject to NEPA, which it is not, a detailed statement under NEPA would not be required because, as a regulation of an administrative nature, this rule would be covered by a categorical exclusion (*see* 43 CFR 46.210(i)). Moreover, BOEM determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would prevent reliance on the categorical exclusion. Therefore, a detailed statement under NEPA is not required.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Improvements Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. Improvements Act, Public Law 114–74, sec. 701(b)(1)(D); OMB M–23–05 at 3–4.

[4] Specifically, Congress directed that agencies adjust civil monetary penalties ''notwithstanding section 553 of title 5, United States Code [Administrative Procedure Act (APA)],'' which generally requires prior notice of proposed rulemaking, opportunity for public comment on proposed rulemaking, and publication of a final rule at least 30 days before its effective date. Improvements Act, sec. 701(b)(1)(D); APA, 5 U.S.C. 553. OMB confirmed this interpretation of the Improvements Act. OMB M–23–05 at 3–4 (''This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'').

Thus, the RFA does not apply to this rulemaking.

3. Paperwork Reduction Act

This rule does not contain information collection requirements, and, therefore, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

4. Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector, of more than $100 million per year (adjusted for inflation). The rule does not have a significant or unique effect on State, local, or Tribal governments, or on the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). 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, or local government agencies, or geographic regions; and

(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.

6. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*) and OMB guidance,[5] this rule is not a major rule, as defined by that act. 5 U.S.C. 804(2).

B. Executive Orders (E.O.)

1. Governmental Actions and Interference With Constitutionally Protected Property Rights (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

2. Regulatory Planning and Review (E.O. 12866); Improving Regulation and Regulatory Review (E.O. 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA determined that annual civil penalty inflation adjustment rules are not significant if they exclusively implement the annual inflation adjustment consistent with OMB guidance and have an annual impact of less than $100 million. *See* OMB Memorandum M–23–05 at 3. This rule meets those conditions and, thus, is not a significant rule.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to reduce uncertainty and to promote predictability and for the use of the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 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 further emphasizes 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. However, BOEM is using neither science nor public participation in this rulemaking. Congress directed agencies to adjust the maximum daily civil penalty amounts using a particular equation without public participation. BOEM does not have discretion to use any other factor in the adjustment. BOEM has developed this rule in a manner consistent with the requirements in E.O. 13563 to the extent relevant and feasible given the limited discretion provided agencies under the Improvements Act.

3. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

4. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule merely adjusts the dollar amount of civil monetary penalties that BOEM may impose on its lessees and has no effects on any action of State or local governments. Therefore, a federalism summary impact statement is not required.

5. Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

The Department of the Interior and BOEM strive to strengthen their government-to-government relationships with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of the Tribes' right to self-governance and Tribal sovereignty. BOEM evaluated this rule under the Department of the Interior's consultation policy, Departmental Manual part 512 chapters 4 and 5, and E.O. 13175, and determined that this rule has no substantial direct effects on federally recognized Indian Tribes or Alaska Native Claims Settlement Act Corporations and that consultation under existing Department and BOEM policies is not required.

6. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

This rule is not a ''significant energy action'' under the definition of that term found in E.O. 13211. Therefore, a statement of energy effects is not required.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Liability, Limit of liability, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, BOEM amends 30 CFR parts 550 and 553 as follows:

[5] *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB M–19–14, Guidance on Compliance with the Congressional Review Act (2019), available at *https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-14.pdf;* OMB Memorandum M–23–05 at 3.

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is $52,646 per day per violation.

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

■ 3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

■ 4. Revise § 553.51(a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to $55,808 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. 2023–03217 Filed 2–14–23; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 6C, 28B, and 54A

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 6C, 28B, and 54A, each of which were previously made available on OFAC's website.

DATES: GLs 6C, 28B, and 54A were issued on January 17, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On January 17, 2023, OFAC issued GLs 6C, 28B, and 54A to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. These GLs superseded GLs 6B, 28A, and 54, respectively. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 6C

Transactions Related to Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates, the Coronavirus Disease 2019 (COVID–19) Pandemic, or Clinical Trials

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587, related to: (1) the production, manufacturing, sale, transport, or provision of agricultural commodities, agricultural equipment, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices; (2) the prevention, diagnosis, or treatment of COVID–19 (including research or clinical studies relating to COVID–19); or (3) clinical trials and other medical research activities are authorized.

(b) For the purposes of this general license, agricultural commodities, medicine, and medical devices are defined as follows:

(1) *Agricultural commodities.* For the purposes of this general license, agricultural commodities are products that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602) and are intended for use as:

(i) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(ii) Seeds for food crops;

(iii) Fertilizers or organic fertilizers; or

(iv) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this general license, medicine is an item that falls within the definition of the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(3) *Medical devices.* For the purposes of this general license, a medical device is an item that falls within the definition of ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(c) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under Executive Order (E.O.) 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(3) Transactions prohibited by E.O. 14066, E.O. 14068, or E.O. 14071, except for transactions prohibited solely by the determination of May 8, 2022, made pursuant to section 1(a)(ii) of E.O. 14071, ''Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services''.

(d) Effective January 17, 2023, General License No. 6B, dated July 14, 2022, is replaced and superseded in its entirety by this General License No. 6C.

Note: 1 to General License No. 6C: Transactions prohibited by E.O. 14066, E.O. 14068, and E.O. 14071 include new investment in the Russian Federation and the importation into the United States of certain products of Russian Federation origin, such as alcoholic beverages and fish, seafood, or preparations thereof.

Note: 2 to General License No. 6C: Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: January 17, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 28B

Authorizing the Wind Down and Rejection of Certain Transactions Involving Public Joint Stock Company Transkapitalbank and Afghanistan

(a) Except as provided in paragraph (c) of this general license, all transactions that are ordinarily incident and necessary to the wind

down of transactions involving Public Joint Stock Company Transkapitalbank (TKB), or any entity in which TKB owns, directly or indirectly, a 50 percent or greater interest (collectively, ''TKB entities''), that are ultimately destined for or originating from Afghanistan and prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern daylight time, March 18, 2023, provided that any payment to any TKB entity is made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

Note to paragraph (a): The transactions authorized in paragraph (a) of this general license include the wind down and closure of correspondent accounts operated by U.S. financial institutions on behalf of TKB entities, provided any remaining funds or assets in the correspondent account to be paid to any TKB entity are placed in a blocked account.

(b) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to reject, rather than block, all transactions ordinarily incident and necessary to the processing of funds ultimately destined for or originating from Afghanistan involving one or more TKB entities as an originating, intermediary or beneficiary financial institution and prohibited by E.O. 14024 through 12:01 a.m. eastern daylight time, March 18, 2023.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

(3) Any transactions otherwise prohibited by the RuHSR, including involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective January 17, 2023, General License No. 28A, dated October 17, 2022, is replaced and superseded in its entirety by this General License No. 28B.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: January 17, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 54A

Authorizing Certain Transactions Involving VEON Ltd. or VEON Holdings B.V. Prohibited by Executive Order 14071

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the purchase or receipt of any debt or equity securities of VEON Ltd. or VEON Holdings B.V. that are prohibited by section 1(a)(i) of Executive Order (E.O.) 14071 are authorized, provided that the debt or equity securities were issued prior to June 6, 2022.

Note to paragraph (a): Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to facilitating, clearing, and settling of transactions authorized by paragraph (a) of this general license that are prohibited by section 1(a)(i) of E.O. 14071 are authorized.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective January 17, 2023, General License No. 54, dated November 18, 2022, is replaced and superseded in its entirety by this General License No. 54A.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: January 17, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–03234 Filed 2–14–23; 8:45 am]

BILLING CODE 4810–AL–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0446; FRL–10195–01–OCSPP]

Pydiflumetofen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pydiflumetofen in or on caneberry subgroup 13–07A. The Interregional Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 15, 2023. Objections and requests for hearings must be received on or before April 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–2021–0446, is available online at *https://www.regulations.gov* or in-person 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, Acting Director, 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–2021–0446 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 April 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–2021–0446, 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 September 22, 2021 (86 FR 52624) (FRL–8792–03–OCSPP), 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 1E8919) by the Interregional Research Project Number 4 (IR–4), Project Headquarters, North Carolina University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.699 be amended to establish a tolerance for residues of the fungicide pydiflumetofen, (3-(difluoromethyl)-*N*-methoxy-1-methyl-*N*-[1-methyl-2-(2,4,6-trichlorophenyl)ethyl]-1*H*-pyrazole-4-carboxamide) in or on caneberry subgroup 13–07A at 4 parts per million (ppm) and to revise the tolerance for vegetable, fruiting, group 8–10 from 0.60 ppm to 0.8 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.* There were no comments received in response to the Notice of Filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing the tolerance for caneberry subgroup 13–07A at a different level than petitioned-for and is not increasing the tolerance for vegetable, fruiting, group 8–10 to 0.8 ppm. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemaking of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemaking and republishing the same sections is unnecessary. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a number of tolerance rulemakings for pydiflumetofen, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to pydiflumetofen and established tolerances for residues of that chemical. EPA is incorporating previously published sections from those rulemakings as described further in this rulemaking, as they remain unchanged.

Toxicological profile. For a discussion of the Toxicological Profile of pydiflumetofen, see Unit III.A. of the August 12, 2019, rulemaking (84 FR 39761) (FRL–9997–09).

Toxicological points of departure/Levels of concern. For a summary of the Toxicological Points of Departure/Levels of Concern for pydiflumetofen used for human health risk assessment, see Unit III.B. of the May 24, 2018, rulemaking (83 FR 24036) (FRL–9976–66).

Exposure assessment. Much of the exposure assessment remains the same although updates have occurred to accommodate exposures from the petitioned-for tolerances. These updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, please reference Unit III.C of the August 12, 2019, rulemaking.

Dietary exposure from food and feed uses. EPA's dietary exposure assessments have been updated to include the additional exposure from the new use on caneberry subgroup 13–07A. The chronic and acute dietary (food and drinking water) exposure and risk assessments were conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 4.02, which uses the 2005–2010 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As with the 2019 assessments, the chronic and acute dietary risk assessments were unrefined, assuming tolerance-level residues, 100% crop treated (100 PCT) for all commodities, and default processing factors.

Dietary exposure from drinking water. The new use on caneberry subgroup 13–07A does not result in an increase in the estimated residue levels in drinking water, so EPA used the same estimated drinking water concentrations identified

in Unit III.C. of the August 12, 2019, rulemaking.

From non-dietary exposure. Since there are no new residential uses proposed under this petition, the prior residential assessment is unchanged, and no risks of concern were identified. The summary can be found in Unit III.C. of the August 12, 2019, rulemaking.

Cumulative effects from substances with 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 pydiflumetofen and any other substances and pydiflumetofen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that pydiflumetofen has a common mechanism of toxicity with other substances.

Safety factor for infants and children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor to 1X. See Unit III.D. of the August 12, 2019, rulemaking for a discussion of the Agency's rationale for that determination.

Aggregate risk and determination of safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and the chronic population adjusted dose (cPAD). Short-intermediate-, and chronic term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure (PODs) to ensure that an adequate MOE exists.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 9.1% of the aPAD for children 3 to 5 years old, the population subgroup with the highest exposure estimate. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 30% of the cPAD for children 1 to 2 years old, the population subgroup with the highest exposure estimate.

The short-term aggregate exposure assessment includes dietary (food and drinking water) and post-application dermal exposure. The dermal routes of exposure used in the aggregate exposure assessment were activities in gardens for adults and children 6 to less than 11 years old and golfing for youths 11 to less than 16 years old. EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 350 for adults, 560 for children 6 to less than 11 years old, and 2,400 for youth 11 to less than 16 years old. Because EPA's level of concern for pydiflumetofen is an MOE of 100 or below, these MOEs are not of concern. No intermediate-term aggregate exposure scenarios were identified. Acute and chronic aggregate risks are equivalent to the dietary (food and drinking water) risks for those respective assessments and are not of concern.

Pydiflumetofen is classified as ''Not Likely to be Carcinogenic to Humans'' at doses that do not induce a proliferative response in the liver. The chronic reference dose will be protective of all chronic toxicity, including carcinogenicity, and is not of concern.

Determination of safety. Therefore, based on the risk assessments and information described above, EPA concludes that there is reasonable certainty that no harm will result in the general population, or to infants and children, from aggregate exposure to pydiflumetofen residues. More detailed information can be found at *https://www.regulations.gov* in the document titled ''Pydiflumetofen. Human Health Risk Assessment for Proposed New Foliar Use on Caneberry Subgroup 13–07A and Greenhouse Foliar/Drench Uses on Peppers and Greenhouse Foliar Uses on Head/Leaf Lettuce. Proposed New Soil Application Use on Cucurbit Vegetables, Crop Group 9; Amended/Increased Foliar Use Rate on Peanut; New Seed Treatment Uses on Edible-Podded Legume Vegetables Crop Subgroup 6A and Succulent Shelled Pea/Bean Crop Subgroup 6B; and Amended/Increased Seed Treatment Use Rate on Soybean.'' in docket ID number EPA–HQ–OPP–2021–0446.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the August 12, 2019, rulemaking.

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).

Codex has not established a MRL for residues of pydiflumetofen in/on caneberry subgroup 13–07A. Codex has established MRLs for residues of pydiflumetofen at 0.5 ppm in/on eggplant, ground cherry, pepino, pepper (bell and non-bell), tomatillo, and tomato, and at 0.02 ppm in/on martynia, okra, and roselle. It is not possible to harmonize the U.S. tolerance for vegetable, fruiting, group 8–10 (0.60 ppm) with these Codex MRLs because decreasing the domestic tolerance could put U.S. growers at risk of violative residue levels despite legal use of pydiflumetofen according to the label. The already established U.S. tolerance is harmonized with the Canadian MRLs for residues of pydiflumetofen in/on the individual crops of vegetable, fruiting, group 8–10.

C. Revisions to Petitioned-for Tolerances

EPA is establishing a tolerance for Caneberry subgroup 13–07A at 5 ppm. IR–4 proposed a tolerance of 4 ppm based on combining the residue data for the representative commodities (blackberry and raspberry) in the Organisation for Economic Cooperation and Development (OECD) calculator analysis. EPA's practice is to conduct the OECD calculator analysis separately for each representative commodity. For pydiflumetofen, the OECD calculator analysis results in a tolerance of 5 ppm for Caneberry subgroup 13–07A.

IR–4 also requested an increase in the existing crop group tolerance for vegetable, fruiting, group 8–10 from 0.60 ppm to 0.8 ppm, based on its calculations entering the four new residue data points from the greenhouse bell and non-bell pepper field trials into the OECD MRL calculator. EPA's practice is to conduct the OECD calculator analysis separately for each representative commodity of a crop group. This was not possible because bell pepper and non-bell pepper each have two residue data points and the OECD MRL calculator requires a minimum of three data points. After considering an alternative approach of estimating an appropriate tolerance as well as the maximum residue in the submitted greenhouse field trial data, which was 0.480 ppm, EPA determined that residues in or on peppers from the proposed new greenhouse uses on peppers are expected to be covered by the currently established tolerance of 0.60 ppm. This was a minor use joint review with Canada's Pest Management

Regulatory Agency (PMRA); PMRA came to the same conclusion and is maintaining its MRL for residues of pydiflumetofen in or on vegetable, fruiting, group 8–10 at 0.60 ppm.

V. Conclusion

Therefore, a tolerance is established for residues of pydiflumetofen, (3-(difluoromethyl)-*N*-methoxy-1-methyl-*N*-[1-methyl-2-(2,4,6-trichlorophenyl)ethyl]-1*H*-pyrazole-4-carboxamide) in or on caneberry subgroup 13–07A at 5 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). 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: January 24, 2023.

Daniel Rosenblatt,

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 § 180.699, amend paragraph (a) by designating the table as table 1 and adding in alphabetical order in newly designated table 1 to paragraph (a) the entry ''Caneberry subgroup 13–07A'' to read as follows:

§ 180.699 Pydiflumetofen; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Caneberry subgroup 13–07A	5
* * * * *	

* * * * *

[FR Doc. 2023–03210 Filed 2–14–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 4 and 9

[PS Docket Nos. 15–80, 13–75; ET Docket No. 04–35; FCC 22–88; FR ID 121451]

Disruptions to Communications; Improving 911 Reliability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts final rules to ensure that 911 special facilities, including Public Safety Answering Points (PSAPs), receive timely and actionable information about 911 service outages that potentially affect them. Also, as a clerical matter, we codify related, previously adopted rule changes which expand the outage reporting exemption for wireless and satellite providers to include ''all specific offices and facilities'' as that term is defined in the Commission's Rules.

DATES: Amendatory instructions 2 (§ 4.9(c)(2) and (e)(1)) and 5 (§ 9.19(d)(4)) are effective March 17, 2023, and amendatory instruction 3 (§ 4.9(a)(4), (c)(2), (e), (f)(4), (g)(1), and (h)) is delayed indefinitely. The Federal Communications Commission will announce the effective date of the delayed amendment by publishing a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Scott Cinnamon, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–2319 or via email at *Scott.Cinnamon@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements

contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order,* FCC 22–88, adopted on November 17, 2022, and released on November 18, 2022. The document is available for download at the following website: *https://docs.fcc.gov/public/attachments/FCC-22-88A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronica files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *FCC504@fcc.gov* or call the FCC's Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

The *Second Report and Order* requires originating service providers (OSPs) and covered 911 service providers to adjust their 911 outage reporting procedures which represent new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The document will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA and, with the exception of the revision to 47 CFR 4.9(e)(1)(iv), will not take effect until approved by OMB. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Second Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

1. In this final rule, we adopt rules and procedures that (a) require covered 911 service providers and OSPs to maintain accurate contact information for the 911 special facilities in areas that they serve; (b) harmonize the 911 special facility outage notification requirement for both covered 911 service providers and OSPs; (c) continue to require covered 911 service providers to file an annual certification with the FCC addressing the reliability of their systems; and (d) direct covered 911 service providers who cease operations to notify the Commission.

A. Require Covered 911 Service Providers and OSPs to Maintain Up-to-Date 911 Special Facility Contact Information

2. We require both covered 911 service providers and OSPs to gather and maintain up-to-date contact information for the 911 special facilities in areas they serve. When 911 outages occur, 911 special facilities lead efforts to notify the public about the outage and establish alternative means of reaching emergency services, which can save lives. 911 special facilities cannot play this important role, however, when they do not receive notification about 911 outages from service providers in their area, which can occur when the service provider does not have an effective point of contact for the 911 special facility. Based on our experience with 911 special facility outage notification over the years, we agree with Association of Public-Safety Communications Officials-International, Inc. (APCO) that ''service providers possess the necessary resources, are already required under Commission rules to notify [911 special facilities] of outages, and already maintain their own databases for contacting [911 special facilities].'' It is critical that service providers maintain up-to-date contact information for 911 special facilities so that they can discharge their 911 outage notification obligations.

3. We require covered 911 service providers and OSPs to annually use special diligence to obtain a 911 special facility's contact information and maintain it up-to-date. ''Special diligence'' is the diligence expected from a person practicing in a particular field of specialty under circumstances like those at issue. The Commission has imposed this higher level of care in circumstances where a failure to take sufficient care can lead to particularly serious public harms. In these circumstances, ''special diligence'' would require, for example, actively seeking to confirm the accuracy of contact information and not relying on the absence of a response. We disagree with CTIA—The Wireless Association (CTIA) and others that argue that special diligence should only require three attempts to contact the 911 special facility using at least two different types of media (*e.g.,* email, phone, text). We believe that this approach would defeat the purpose of this requirement, as instead of incentivizing providers to ascertain and update such contact information to prepare for anticipated natural disasters or other emergencies, it would allow 911 service providers and OSPs to satisfy their obligations during such emergencies by simply reaching out to what may well be an outdated point of contact. Obtaining, maintaining, and annually confirming up-to-date accurate contact information for 911 special facilities is the overarching goal of this requirement, so requiring a higher level of care than reaching out to the prior contact is imperative to ensure public safety. Providers may deem it appropriate to maintain documentation of their attempts to annually obtain and maintain up-to-date contact information from the 911 special facilities they serve, including by escalating their elicitation of contact information to state or local 911 authorities where a 911 special facility is not immediately responsive. These requirements do not relieve a provider from any requirement in current consent decrees with the Commission to obtain and maintain up-to-date contact information for 911 special facilities.

B. Harmonizing 911 Special Facility Notification for Covered 911 Service Providers and OSPs

4. We conclude that, as proposed, we should harmonize OSPs' notification requirements with those of covered 911 service providers. Providers and public safety organizations strongly suggest that a 911 special facility notification process with uniform content, means, timing, and frequency of notification will simplify compliance for providers and reduce confusion for 911 special facilities. Namely, we require covered 911 service providers and OSPs to notify 911 special facilities about outages by providing the same notification content, by the same means, and with the same timing and frequency. Covered 911 service providers and OSPs shall include the same industry-standard informational elements in their 911 special facility notifications. As covered 911 service

providers do today, OSPs shall transmit their 911 special facility notifications by telephone and in writing via electronic means in the absence of another method mutually agreed upon in writing in advance by the 911 special facility and the provider. OSPs and covered 911 service providers shall transmit initial 911 special facility notifications as soon as possible, but no later than 30 minutes after discovering that they have experienced an outage that potentially affects a 911 special facility and will communicate additional material information to potentially affected 911 special facilities as the information becomes available, but no later than two hours after the initial notification. 47 CFR 4.9(h).

5. Some commenters claim that the scope of the existing notification requirements does not include general network outages. Specifically, some argue that the Commission's current rules require OSPs to notify 911 special facilities about outages that affect only 911 service, but not about outages that affect general calling, even if that outage prevents 911 calls from being transmitted to the PSAP. The Commission's rules make clear, however, that notification to a 911 special facility is required when an outage ''potentially affects a 911 special facility'' under § 4.5(e)(1) to the extent that the outage results in ''a loss of communications to PSAP(s) potentially affecting at least 900,000 user-minutes and the failure is neither at the PSAP(s) nor on the premises of the PSAP(s); no reroute for all end users was available; and the outage lasts 30 minutes or more.'' CTIA argues that the Commission confirmed CTIA's interpretation of the outage reporting rules when adopting notification rules for interconnected voice over internet protocol services (VoIP) providers because those rules distinguish between outages that ''affect all interconnected VoIP calls, not just calls to 9–1–1'' and those ''that potentially affect a 9–1–1 special facility.'' The distinction that *Report and Order,* 77 FR 25088 (April 27, 2012), 27 FCC Rcd 2650 para. 99 & n.214, made was warranted because some general outages may not ''potentially affect a 911 special facility.'' When general outages do ''potentially affect a 911 special facility,'' however, service providers, including interconnected VoIP providers, must notify 911 special facilities. This approach ensures that PSAPs stay informed about outages that affect their operations, as it would not serve the purpose of the rule to solely require PSAPs be notified about outages to a service provider's 911-specific services but not require notification about more extensive outages that prevent the delivery of all calls (including 911 calls). Service providers are only required to notify 911 special facilities about outages that potentially affect that facility. If an outage does not result in loss of communications to a PSAP, then no PSAP is required to be notified although notification to the Commission may still be required.

6. The 911 special facility notification requirements we adopt in this final rule apply to all covered 911 service providers and OSPs. As the Boulder Regional Telephone Service Authority (BRETSA) observes, whether the outage affects a covered 911 service provider, or a wireless, wireline, cable, satellite, or VoIP service provider, to the public and PSAPs, the inability of people in need of emergency assistance to reach 911 is just as serious. No commenter raises a concern about any particular type of service provider's ability to comply with the harmonized 911 special facility outage notification requirements we adopt in this final rule except Voice on the Net Coalition (VON), who claims that because interconnected ''VoIP providers rely on third party service providers . . . to manage and route 911 calls, . . . unless there is a complaint from an end user customer unable to complete a 911 call'' a VoIP provider would be unaware of the outage and by then, more than likely, the affected PSAPs would already have notice of the outage.'' We note that 47 CFR 4.9(g)(1)(i) requires VoIP providers to notify 911 special facilities of outages that potentially affect them. Reconsidering that rule is outside of the scope of this proceeding. Moreover, VoIP providers routinely file NORS reports with the Commission when reportable 911 outages in their systems occur.

7. Reliance upon a third-party service provider to manage, route, or otherwise contribute to 911 call processing does not relieve a covered 911 service provider or an OSP, including an interconnected VoIP provider, of the obligation to provide notification to 911 special facilities under this rule. It is the duty of covered 911 service providers and OSPs, including interconnected VoIP service providers, to provide 911 service in accordance with the Commission's rules. Where a covered 911 service provider or an OSP supports 911 calling through a contractual arrangement with a third-party, we will hold those service providers accountable for compliance with their notification obligations. In this regard, the Commission has long held that licensees and other regulatees are responsible for the acts and omissions of their employees and independent contractors and has recognized that under long established principles of common law, statutory duties are nondelegable.

8. *Content.* We conclude that, as proposed, we should require covered 911 service providers and OSPs to provide the following material informational elements in their 911 special facility outage notifications:

- An identifier unique to each outage;
- The name, telephone number, and email address at which the notifying service provider can be reached for follow-up;
- The name of the service provider(s) experiencing the outage;
- The date and time when the incident began (including a notation of the relevant time zone);
- The type of communications service(s) affected;
- The geographic area affected by the outage;
- A statement of the notifying service provider's expectations for how the outage potentially affects the 911 special facility (*e.g.,* dropped calls or missing metadata could include an intermittent, partial, or complete loss of Automatic Location Identification (ALI) or Automatic Number Identification (ANI), the absence of which could prevent a 911 special facility from timely deploying first responders to the caller's location);
- The expected date and time of restoration, including a notation of the relevant time zone;
- The best-known cause of the outage; and
- A statement of whether the message is the notifying service provider's initial notification to the 911 special facility, an update to an initial notification, or a message intended to be the notifying service provider's final assessment of the outage.

These informational elements were developed by the Network Reliability Steering Committee Situational Awareness for 9–1–1 Outages Task Force Subcommittee (NRSC Task Force) and proposed in the *Third Notice of Proposed Rulemaking (NPRM),* 86 FR 34679 (June 30, 2021). The unique outage identifier was proposed separately by the NRSC Task Force and included in the *Third NPRM* with a request for comment. Commenters overwhelmingly support covered 911 service providers' and OSPs' use of a standardized set of informational elements in their 911 outage reports so that 911 special facilities will receive timely, accurate, and actionable

information in a consistent format from all of the providers within their service area. T-Mobile expressed readiness ''to modify its outage notification to PSAPs to include this information'' when the new rule becomes effective. Texas 911 Entities ''urges the Commission to adopt the specific informational elements [proposed] as reasonable and potentially helpful; but [to] also include as a required specific information element the ATIS NRSC [Alliance for Telecommunications Industry Solutions Network Reliability Steering Committee] Task Force recommended Unique Incident Identifier.'' The National Emergency Number Association (NENA) states ''[h]armonization will provide 9–1–1 with more reliable, actionable information, and will streamline the channels and means by which 9–1–1 receives outage notifications'' and also supports the use of a Unique Incident Identifier.

9. We defer action on our proposal to require covered 911 service providers and OSPs to include geographic information system (GIS) data relevant to the geographic area affected by a 911 outage in their 911 special facility outages notifications. We agree with Verizon, USTelecom, and Lumen that including such data at this time might involve potentially burdensome IT changes. Moreover, some commenters argue that many 911 special facilities do not currently have the ability to receive or make use of GIS information. However, other commenters argue that graphical outage information other than GIS information could be useful to 911 special facilities, which do ''rely on GIS for a variety of mapping needs.'' In addition to a lack of clarity in the record as to the current capabilities of PSAPs, we do not have a sufficient record on alternative kinds of graphical information that would be useful to 911 special facilities. We direct the Public Safety and Homeland Security Bureau to gather for future consideration additional information on 911 special facilities' capabilities to use graphical outage information, the utility of that information for 911 outage remediation, and the formats in which the graphic information would be feasible for service providers to produce.

10. We disagree with the suggestions of USTelecom and Verizon that providers should not be required to share the ''best known cause'' of an outage due to national security and business competition concerns. Covered 911 service providers have been required to transmit ''the nature of the outage [and] its best known cause'' to 911 special facilities no later than two hours after their initial contact with the 911 special facility since 2013. Until this proceeding, we have had no reason to address stakeholder concerns about confidentiality as a result of this disclosure until receiving the comments of USTelecom and Verizon. Including ''best known cause'' as an informational element is necessary because, if known, the cause of the outage can provide guidance which might assist the 911 special facility in mitigating the effect of the outage. To allow providers sufficient flexibility in their initial assessment of ''best known cause,'' the ATIS NRSC task force suggests simply stating whether the cause was hardware, software, or network related. We endorse that approach in instances where disclosure of greater detail could implicate national security issues. We conclude that describing an outage's ''best known cause'' at this level of generality in such instances will allow 911 special facilities to better determine whether they can play a role in outage management and remediation without disclosing information that implicates national security or business competition issues.

11. *Means.* We conclude that, as proposed, we should require OSPs to notify 911 special facilities of outages that potentially affect them by telephone and in writing by electronic means, as covered 911 service providers do. Some commenters showed a preference for electronic notification while others suggested that there is room for both electronic and telephonic notifications. We will maintain the dual notification requirement to provide the greatest assurance that a 911 special facility, regardless of their size or capability, will receive the outage notification, whether administrative lines are affected by an outage preventing receipt of a telephone call, or internet service is down preventing receipt of an email.

12. Nevertheless, we also allow OSPs to notify 911 special facilities by alternative means if mutually agreed upon in writing in advance by the 911 special facility and the provider, as we currently allow covered 911 service providers to do. This also allows a 911 special facility to request delivery by an electronic means other than email, or solely by electronic means. For example, if a provider and a 911 special facility agree in writing in advance of an outage that outage notifications be provided only by text message, then no telephonic notice shall be required. Service providers can notify 911 special facilities in the manner described by their written agreement. This approach recognizes that 911 special facilities have varying staff resources and degrees of technological sophistication. Thus, as T-Mobile suggests, we will ''provide [OSPs] the flexibility to provide notifications and related updates in the manner desired by the [911 special facility] (email, phone, or both), rather than mandate specific means of communicating an outage.''

13. *Timing.* We conclude that, as proposed, we should require covered 911 service providers and OSPs to notify 911 special facilities of outages as soon as possible, but no later than within 30 minutes of when the outage that potentially affects 911 service is discovered. These initial notifications are intended to provide preliminary notice of a potential problem to a 911 special facility so that the 911 special facility can, as quickly as possible, ''mitigate the impacts of the outage and, as necessary, alert the public to alternative means of connecting to 911.'' If a 911 special facility does not receive timely outage notification, it cannot effectively initiate alternate means of communications and provide access for those populations impacted by the outage. According to the Maryland NG911 Commission, when OSPs wait longer than 30 minutes to provide the initial notification of an outage, it limits the ability of 911 special facilities to timely publicize alternative methods for contacting emergency services during many 911 outages. As we believe there is ample precedent that describes what constitutes ''discovery'' for purposes of this rule, we decline the request of CTIA and others to define ''discovery'' as the time when a provider both confirms that the service disruption constitutes a reportable outage and confirms the identities of the potentially affected PSAPs. We believe that such a definition of discovery would disincentivize providers from learning as much about an outage as quickly as possible. This would undermine the requirement's purpose of providing 911 special facilities with notice of a potential problem so they quickly take mitigating actions. It would also be inconsistent with the important goal of creating uniform notification requirements as between covered 911 service providers and OSPs. We also decline the request of CTIA and others to clarify that an OSP is under no obligation to notify a 911 special facility if the OSP discovers an outage only after it has been resolved, as it also would disincentivize OSPs from rapidly investigating outages and would therefore be inconsistent with the purpose of the requirement.

14. Consistent with our reasoning above, reliance upon a third-party service provider to manage, route, or otherwise contribute to 911 call

processing does not relieve a service provider of its obligation to notify 911 special facilities about outages that potentially affect them within 30 minutes of when the outage is discovered—even if the discovery is first made by the third party. Service providers, including providers of interconnected VoIP service, are responsible for providing 911 service in accordance with the Commission's rules, and this includes responsibility for transmitting the required information to a PSAP, designated statewide default answering point, or appropriate local emergency authority. Thus, the obligation to notify a 911 special facility within 30 minutes is triggered when the outage is discovered, regardless of whether it is discovered by a third-party transport provider or covered 911 service provider. We expect service providers to address these responsibilities within their 911 service contracts with third parties as needed.

15. Service providers must provide 911 special facilities with all available material information they have about the outage 30 minutes from the time of discovery, even if the service provider does not have available all the informational elements described above. We agree with NENA that ''a notification's utility to 9–1–1 diminishes significantly as time passes.'' At the same time, we acknowledge CTIA's point that wireless providers may not have the all the required information to transmit the outage notification to 911 special facilities within 30 minutes. We disagree with CTIA, Lumen, and others who request that the Commission apply this 30-minute notification deadline flexibly by allowing providers to merely begin, and not complete, the notification to 911 special facilities within 30 minutes. As the record demonstrates, all 911 special facilities need outage notifications as soon as possible and an approach that would potentially allow service providers—contrary to our established requirement for covered 911 service providers—to delay some 911 special facilities' outage notifications for hours after discovery would not serve the public safety purposes of the rule. Lumen additionally argues that the non-fixed nature of VoIP services makes it particularly challenging for interconnected VoIP providers to notify PSAPs of outages within 30 minutes and risks ''over-notifying PSAPs out of an abundance of caution.'' On balance, we believe the public safety interests served by PSAPs quickly receiving outage notifications outweigh the risk of inaccuracies or over-notification.

16. We decline to mandate a period of fewer than 30 minutes for covered 911 service providers and OSPs to notify 911 special facilities about outages that potentially affect them, as some commenters request. While we require covered 911 service providers and OSPs to notify 911 special facilities about outages that potentially affect 911 as soon as possible—which could be less than 30 minutes in some circumstances—we are persuaded by the comments of providers that a deadline of less than 30 minutes would not allow sufficient time for covered 911 service providers or OSPs to gather and transmit meaningful information to potentially affected 911 special facilities in all instances. In this connection, we disagree with AT&T that ''the Commission is elevating the speed of [911 special facility] notifications over accuracy.'' Rather, with the approach we adopt in this final rule, we strike a balance between the need for timely and actionable 911 outage information and the accuracy of that information.

17. *Frequency.* We conclude that, as proposed, OSPs should update 911 special facilities with additional, material outage information as soon as possible after it becomes available and no later than two hours after the provider's initial notification, as covered 911 service providers already do. Material information for the purpose of this follow up notification consists of the same informational elements that we require covered 911 service providers and OSPs to disclose in their initial notification, if available. We agree with NENA that the two-hour follow-up deadline will produce ''predictability in notification frequency [which] will significantly assist [911 special facilities] in analysis and mitigation of network outages.'' NCTA opposes a follow up notification requirement for OSPs because it could make it harder to notify relevant 911 special facilities and ''would likely not lead to the sharing of useful information.'' The follow-up notification requirement we adopt in this final rule, however, does not introduce any additional complexity into the determination of which 911 special facilities should receive notice of an outage. Even where a 911 outage remains unresolved after two hours without any new, material information becoming available in the intervening period, an obligation to provide an update no later than two hours after initial contact provides better information to 911 special facilities than having them assume there is no news if they do not have an update from the service providers. CTIA and others encourage the Commission to prepare 911 special facilities for an increased volume and frequency of notifications by OSPs. We decline this suggestion because, to the contrary, APCO states the problem with 911 special facility outage notification today is not too many notifications, but too few. Indeed, APCO asks the Commission to lower the threshold for a reportable outage. Providers argue that such a change to the current trigger for these outage notification requirements would require extensive changes to their systems whose benefits would not outweigh the costs. We direct the Public Safety and Homeland Security Bureau to gather for future consideration information on the volume of 911 outages that may go unreported under the Commission's existing outage notification thresholds and seek additional comment on possible alternative outage reporting thresholds.

18. In this connection, we note that, for outages that last longer than two hours, a service provider's obligation to continue to follow up with additional material information as soon as possible after it becomes available continues until the outage is completely repaired and service is fully restored. This ongoing cadence of notifications ensures that speed and accuracy of 911 special facility notifications are not mutually exclusive. After providing initial notification no later than 30 minutes after discovering the outage, service providers have an opportunity to provide more information and make any corrections that may be necessary to their prior statements about the outage. Under the rules we adopt in this document, the conclusion of any outage would constitute material information because it would represent a change in at least ''the expected date and time of restoration.'' Such a notification would likely represent ''a service provider's final assessment of the outage,'' and should be described as such, if appropriate. Just as timely and accurate information is needed for 911 special facilities to assist service providers in mitigating the disruptions caused by network outages, it is equally important for 911 special facilities to know when the outage has been resolved so that normal services and processes can be restored as soon as possible.

19. *Outage notifications directly to customers.* We decline to adopt our proposal that OSPs and covered 911 service providers directly notify their customers about 911 outages. ATIS states that disclosing information about where 911 service is unavailable would provide bad actors with information on vulnerable locations. Several

commenters state that direct customer notification from service providers has the potential to cause confusion and result in notification fatigue to customers. Several commenters suggested that notice of 911 service outages should come from 911 special facilities and state or local governments, not providers, because public organizations have accountability for public safety.

20. We also note that the Commission has adopted and implemented new information sharing rules that allow state and local officials access to the information in outage reports filed with the Commission in the Network Outage Reporting System (NORS) and Disaster Outage Reporting System (DIRS) (*https://www.fcc.gov/outage-information-sharing*). This access will provide public safety agencies with situational awareness never before available, allowing for these state and local agencies to keep their communities aware of the status of 911 services in their communities.

C. Maintain the Annual 911 Certification Reporting Requirement

21. We decline to reduce the frequency by which covered 911 service providers file 911 reliability certifications, as proposed, in light of the limited record that the Commission received on this issue. We instead continue to require covered 911 service providers to file 911 reliability certifications annually. We find that maintaining an annual frequency for 911 reliability certification is necessary to ensure that our 911 network remains resilient and robust as the use of our 911 network continues to expand. As the transition to NG911 continues, more and more 911 special facilities are swapping out legacy systems for new equipment and these annual certifications enable the Commission to monitor implementation and performance of the new equipment. NENA reports that the number of 911 calls annually continues to increase. In fact, in 2019 alone, over 200 million emergency calls were placed to 911, and of those calls, 70% were from wireless phones. As APCO states, ''[a]ny burden on submitting the annual certification . . . is outweighed by the interest in continuing to promote the seriousness and significance of ensuring reliable and resilient 9–1–1 networks.'' Given all of these factors, and the overall importance of maintaining the reliability of 911 networks despite all these changes, we agree with BRETSA that ''[i]t should not be too much to expect covered 9–1–1 providers to make the annual certifications required by the Commission.'' The three commenters supporting a reduction in the frequency of the filing of the reliability certifications did not provide evidence that this change would reduce the providers' regulatory burden substantially without negatively impacting 911 system reliability.

22. The record suggests that making the obligation to file 911 reliability certification less frequent would not meaningfully reduce the burden of compliance for covered 911 service providers. The commenters who proposed filing 911 reliability certifications less often than annually did not offer a compelling analysis of what specific cost reduction would result from the change in filing frequency. AT&T does estimate that ''it requires more than 2,000 hours per year to review and validate the information it includes on these [certification] worksheets.'' However, even if we could estimate the costs associated with those 2,000 hours, it is unclear how many of those 2,000 hours would be saved if filing the certification was required biennially or triennially. Whether or not a covered 911 service provider is required to file an annual certification in a given year, it would still be required to create and maintain records supporting compliance with the elements of the 911 reliability certification and retain those records for two years. Given that the records still must be created and maintained, we conclude that any cost savings realized in changing the frequency of the filing of 911 reliability certification would be outweighed by the value of maintaining the annual filing.

D. Require Covered 911 Service Providers Who Cease Operations To Notify the Commission

23. The Commission adopts its proposal requiring covered 911 service providers that cease operations to advise the FCC by filing a notification no later than 60 days after the cessation of service, except that we will allow for the notification to be a declaration under penalty of perjury rather than affidavit, as AT&T suggests, which is consistent with our rules. The Commission received no opposition to this proposal. We emphasize that the notification is required only when a covered 911 service provider completely ceases providing covered 911 services as opposed to a situation where a covered 911 service provider might cease service to a particular 911 special facility. We adopt this measure ''to ensure that the Commission does not expend time and resources to investigate why a covered 911 service provider has failed to file its 911 certification in a timely manner, when the reason is simply because the provider is no longer a covered 911 service provider and is therefore no longer required to file the required certifications,'' as proposed.

E. Codify Previously Adopted Rule Changes

24. Section 4.9 of the Commission's rules sets forth the outage reporting requirements for different service providers including wireless and satellite providers. Initially, the rules exempted wireless and satellite providers from having to report on outages at airports. The rationale was that wireless and satellite providers did not have dedicated equipment in place at airports because much of the communications was conducted through wireline facilities. In 2016, the Commission adopted the *2016 Part 4 Order,* 81 FR 45055 (July 12, 2016), that expanded the reporting exemption for satellite and wireless providers to include ''all special offices and facilities'' as that term is defined in § 4.5(b) of the rules (*i.e.,* to ''entities enrolled in the Telecommunications Service Priority (TSP) Program at priority Levels 1 and 2, which may include, but are not limited to, major military installations, key government facilities, nuclear power plants, and those airports that are listed as current primary (PR) airports in the FAA's [Federal Aviation Administration] National Plan of Integrated Airports Systems (NPIAS)).'' The changes to § 4.9 of the rules adopted in the *2016 Part 4 Order* were not codified into our rules. In the *Third NPRM,* we proposed to codify the rule as previously adopted.

25. In the absence of comments on this issue, we amend our part 4 rules to expand the outage reporting exemption for satellite and wireless providers to include all ''special offices and facilities'' as defined in § 4.5(b), as adopted in the *2016 Part 4 Order.* While wireless service has become ubiquitous throughout the United States, it has not yet been adopted by special offices and facilities for their critical communications.

F. Compliance Timeframe

26. *New rules for collecting and maintaining 911 special facility contact information.* The rules we adopt in this document requiring covered 911 service providers and OSPs to gather, update, and maintain accurate contact information for officials designated to receive outage notification at each 911 special facility in areas that they serve require review by the Office of Management and Budget (OMB)

pursuant to the Paperwork Reduction Act (PRA). Following the completion of that review, the Bureau will publish a document in the **Federal Register** announcing the relevant effective date, which will be 120 days after such publication. The record shows that many service providers already have accurate contact information for the 911 special facilities in their service areas enabling accurate outage reporting. For those service providers that do not already have up-to-date contact information for 911 special facilities in areas that they serve, we anticipate they will use the time between now and the expiration of the 120-day period to develop and implement procedures needed to initially obtain accurate contact information through the special diligence process. Once providers have a contact list in place, special diligence would require them to annually verify the accuracy of their 911 special facility contact list to maintain it up-to-date.

27. *New rules to harmonize reporting requirements for part 4 and covered 911 service providers.* The rules we adopt in this document requiring OSPs to modify the means, timing, and frequency of their outage notification templates to conform with those provided by covered 911 service providers, and for covered 911 service providers and OSPs to adjust the content of their outage notifications to conform with the information template designed by ATIS, will require review of the new and modified information collection requirements by OMB under the PRA. Following the completion of that review, the Bureau will publish a document in the **Federal Register** announcing the relevant effective date, which will be 120 days after such publication. This compliance period will allow covered 911 service providers and OSPs to modify and standardize the informational elements that they provide to 911 special facilities, including through use of the preexisting and freely available ATIS PSAP notification template. It will allow OSPs to, in parallel, make any procedural changes that may be necessary to notify 911 special facilities in areas they serve about outages that potentially affect them within 30 minutes of discovery, including by automating their notification processes to the extent warranted. It will allow OSPs to develop procedures to notify 911 special facilities by telephone and electronic means, or to establish in writing another mutually agreeable notification method, including through the contact information elicitation process described above. T-Mobile said that it ''stands ready to modify its outage notifications to PSAPs to include this information by the effective date proposed in the [*Third NPRM*],'' and we suspect many other providers are similarly prepared for the changes adopted here. We do not anticipate that OSPs will need to expend substantial time or resources to come into compliance with our follow-up notification requirement because service providers can use the same procedures to follow up with 911 special facilities as they use to notify 911 special facilities in the first instance.

28. We require covered 911 service providers to notify the FCC when they cease operations as of the date 30 days after publication in the **Federal Register** announcing the completion of OMB review. We anticipate that any additional time and resources that covered 911 service providers might expend to comply with this requirement would be negligible because service providers winding down their businesses already provide notification of the occurrence to their stakeholders, and the Commission does not require this notice to contain any particular content that might pose an additional burden to compile.

29. Finally, the exemption that we have decided to codify in this final rule for reporting outages at special offices and facilities in addition to airports will be effective 30 days after the Bureau publishes a document in the **Federal Register** announcing the codification of this already adopted rule. The codification of this existing exemption eliminates any burden that may have been attendant to the provision of these reports.

G. Benefits and Costs

30. We determine that the rules we adopt in this document concerning the creation and maintenance of a 911 special facility contact list will result in a one-time compliance cost of $149,000 and an annual recurring cost of $1,652,000. We sought comment on these cost estimates in the *Third NPRM* and received no persuasive objection or alternative calculation in response. We conclude that the one-time cost for covered 911 service providers and OSPs to create an email survey to elicit 911 special facility contact information that operate in the areas they serve will be $50,000, and the one-time cost to harmonize the covered 911 service provider and OSP 911 special facility outage notification templates will be $99,000. We note, however, that our analysis is based on averages across all providers and that, whereas some nationwide providers like AT&T likely have higher costs than the average cost we estimate, others, such as local providers, are expected to have lower costs. We believe the majority of 911 special facilities will respond to the email survey, limiting the number of follow-up calls necessary to establish the initial contact list. The rules we adopt here will result in annual recurring costs for covered 911 service providers and OSPs of $197,000 for identifying 911 special facilities that could potentially be affected by a service outage, $197,000 for maintaining and updating 911 special facility contact information for those 911 special facilities that could potentially be affected by a service outage, and $1,258,000 for notifying 911 special facilities of outages that potentially affect them pursuant to the harmonized notification framework we adopt in this document. The $1,258,000 recurring cost presented in the NPRM was calculated as follows: To notify 911 special facilities, we propose that a communications equipment operator, earning $34/hour, would spend a total of one hour per outage to send out two notifications for each of an estimated 37,000 outages, for a total of $1,258,000 [$34/hour × 1 hour × 37,000]. Our estimate of 37,000 outages is based on the incidence of outages that potentially affected 911 in NORS reports during 2020.

31. We recognize that it is difficult to quantify the value of continuity of access to 911 service, which includes its capacity to save lives and mitigate and prevent injuries. In this case, it is only necessary to demonstrate that the public safety value of the proposals adopted in this final rule is reasonably likely to exceed the costs of implementation. People who dial 911 are often in perilous situation where time and accuracy are critical. As we stated in the *Third NPRM,* ''the benefits attributable to outage notification are substantial and may have significant positive effects on the abilities of 911 special facilities to safeguard the health and safety of residents during outages that threaten residents' ability to reach 911.'' When 911 service providers and OSPs have timely, actionable information about 911 outages that affect the 911 special facilities including the PSAPs they serve, they are the best able to maintain the public's access to emergency services when it would otherwise be interrupted. We agree with the Maryland NG911 Commission that ''[w]hen the PSAP does not get timely or complete notification of outages, they cannot effectively initiate alternate means of communication and provide

access for those populations impacted by the outage. Public service messaging, crisis communications options, and back-up operations all require time to activate. When the 911 special facility is not informed in a thorough or punctual manner, their ability to trigger alternative methods for their populations to contact emergency services is severely compromised.'' The rules we adopt in this document, both individually and taken together, will serve to improve communications between providers and 911 special facilities by requiring providers to maintain develop and maintain an accurate contact list for the 911 special facilities they serve. Consequently, they will also facilitate the prompt ability of 911 special facilities to manage those outages' impacts on operations and on the public, resulting in more prompt dispatch of service.

32. In the *Third NPRM* we sought comment on what costs savings would be realized if less frequent 911 reliability certifications were required. While there were general suggestions of cost savings if the annual certification requirement was changed to biennial or triennial, the record offered no evidence of specific cost savings. We conclude that there will be no additional costs resulting from our decision to maintain the existing annual certification requirement.

33. We adopt the new rule requiring covered 911 service providers to notify the FCC when they cease operations ''to ensure that the Commission does not expend time and resources to investigate why a covered 911 service provider has failed to file its 911 certification in a timely manner, when the reason is simply because the provider is no longer a covered 911 service provider and is therefore no longer required to file the required certifications''. We sought comment on the costs and benefits of this proposal, but commenters were silent on this issue. We conclude that our presumption in the *Third NPRM* is correct and that because there will be few companies that cease their covered 911 service provider operations from year to year, the filings costs will be minimal, while the benefits will be much greater.

34. Finally, our proposal to codify the rule that we adopted in 2016 to extend the exemption for filing network outage reports to all special offices and facilities should not result in any additional costs. It will result in the filing of fewer reports. The record was silent on the issue of cost for this proposal, so we conclude our analysis is correct.

Procedural Matters

35. *Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Third Notice of Proposed Rulemaking (*Third NPRM*) adopted in April 2021. The Commission sought written public comment on the proposals in the *Third NPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA and was attached as Appendix B to the *Second Report and Order.*

A. Need for, and Objectives of, the Final Rules

36. In this proceeding, the Commission adopts rules and procedures to improve the reliability and resiliency of telecommunications networks nationwide and 911 networks specifically so that the American public can continue to reach emergency services without undue delay or disruption. In particular, the *Third NPRM* proposed and sought comment on measures to harmonize the Commission's Public Safety Answering Points (PSAP) outage notification rules such that all service providers must notify all potentially affected 911 special facilities, including PSAPs, of outages in the same manner and with more specific information. The Commission's current rules for 911 special facility outage reporting differentiates between ''covered 911 service providers'' that provide service directly to 911 special facilities and ''originating'' or ''part 4'' service providers that only provide the capability for consumers to originate 911 calls. These new rules apply to all originating service providers as well as to all covered 911 service providers and make the nation's 911 service more reliable and the public safer, while striking an appropriate balance between costs and benefits of such regulation. We note that cable providers and interconnected VoIP providers often are also wireline providers. The references to providers of these types of services here correspond to references in the part 4 outage reporting rules. We also adopt a rule that requires covered 911 service providers to notify the Commission within 60 days of the day they cease operations. This will conserve Commission resources by avoiding unnecessary pursuit of covered 911 service providers no longer providing service. We also codify rules adopted in 2016 extending the exemption of satellite and terrestrial wireless providers from reporting outages potentially affecting special offices and facilities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

37. The Small Business Administration (SBA) Chief Counsel did not file comments on the IRFA.

D. Description of the Small Entities to Which the Final Rules Will Apply

38. The RFA directs agencies to provide a description of the small entities that may be affected by the rules. 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 dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The types of entities that will be affected include Cable and Other Subscription Programming Providers, Cable System Operators, Incumbent Local Exchange Carriers, Local Exchange Carriers, Satellite Telecommunications Providers, Wired Telecommunications Carriers, Wireless Communications Service Providers, Wireless Telecommunications Carriers, Wireless Telephony Operators, Telecommunications Resellers, and All Other Telecommunications, which includes specialized telecommunications service providers, such as satellite tracking, communications telemetry, and radar station operation, and providers of internet service (*e.g.,* dial-up ISPs) or voice over internet protocol (VoIP) services.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

39. The rules adopted in the *Second Report and Order* require OSPs, including those that are small entities, to adjust their procedures for obtaining and maintaining contact information for the 911 special facilities they serve and for notifying 911 special facilities of outages that might potentially affect them. These new rules change the content, means, timing, and frequency of the 911 special facilities outage notifications these providers transmit.

40. The rules also require covered 911 service providers to file a notice with the FCC when they discontinue service.

The notice should be filed no later than 60 days after the cessation of service and accompanied by a declaration, rather than a notarized affidavit, from a representative of the provider. This is a one-time, minimal burden for those covered 911 service providers that cease operations. Based on our year over year review of annual reliability certifications filed by covered 911 service providers, we anticipate only a small number of these filings each year.

41. We do not believe that the costs and/or administrative burdens associated with any of the proposal rule changes will unduly burden small entities. Furthermore, we believe the value of the public safety benefits generated by our 911 special facility outage notification proposals outweigh the estimated costs. These rule changes will enable 911 special facilities to accelerate the public's ability to reach 911 call takers during an outage, reducing the probability of lives lost during any such outage. These rules will also generate an additional, incremental benefit by helping people reach 911 call takers more quickly and by reducing first responder response times. Notifying the FCC when a covered 911 service provider ceases operations will prevent the FCC from transmitting and the provider from responding to unnecessary notices regarding the operational status of the provider.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

42. The Commission has taken several steps that could reduce the economic impact for small entities. First, the elements for 911 special facility outage notifications that we adopt largely track the NRSC Task Force's template. Therefore, to the extent small entities have or will implement the ATIS NRSC Task Force's template, compliance with our rules should not impose significant additional costs. Next, we adopt an approach that establishes a baseline expectation of shared information while otherwise preserving flexibility for service providers to determine the means by which they present this information to 911 special facilities. Similarly, we do not specify the particular procedures that service providers must develop or follow to elicit 911 special facility contact information.

43. Following review of the record in this proceeding, the Commission has decided not to change the frequency with which covered 911 service providers are required to file 911 reliability certifications. The current annual filing requirement strikes the appropriate balance between maintaining 911 network reliability and public awareness of 911 unavailability.

Ordering Clauses

44. *Accordingly it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 4(n), 201(b), 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, and 403, of the Communications Act of 1934, as amended, and sections 3(b) and 6 of the Wireless Communications and Public Safety Act of 1999, as amended, 47 U.S.C. 151, 154(i), 154(j) 154(n), 201(b), 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, 403, 615, 615a–1, the *Second Report and Order* is *adopted.*

45. *It is further ordered* that the amendments of the Commission's Rules as set forth in Appendix A of the *Second Report and Order* are *adopted,* effective as of the dates set forth above.

46. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of the *Second Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 4 and 9

Airports, Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 4 and 9 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

§ 4.9 [Amended]

■ 2. Effective March 17, 2023March 17, 2023, amend § 4.9 by:
■ a. Adding the word ''or'' at the end of paragraph (c)(2)(ii);
■ b. Removing and reserving paragraph (c)(2)(iii);
■ c. Adding the word ''or'' at the end of paragraph (e)(1)(iii); and
■ d. Removing and reserving paragraph (e)(1)(iv).

■ 3. Delayed indefinitely, further amend § 4.9 by:
■ a. Revising paragraphs (a)(4) and (c)(2)(iv);
■ b. Adding a heading for paragraph (e); and
■ c. Revising paragraphs (e)(1)(v), (f)(4), (g)(1)(i), and (h).

The revisions and addition read as follows:

§ 4.9 Outage reporting requirements—threshold criteria.

(a) * * *

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)), in which case they also shall notify the affected 911 facility in the manner described in paragraph (h) of this section. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

* * * * *

(c) * * *

(2) * * *

(iv) Potentially affecting a 911 special facility (as defined in § 4.5(e)), in which case the affected 911 facility shall be notified in the manner described in paragraph (h) of this section.

* * * * *

(e) *Wireless.*

(1) * * *

(v) That potentially affects a 911 special facility (as defined in § 4.5(e)), in which case they also shall notify the affected 911 facility in the manner described in paragraph (h) of this section.

* * * * *

(f) * * *

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)), in which case they also shall notify-the affected 911 facility in the manner described in paragraph (h) of this section. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and

the Initial and Final reports shall comply with all of the requirements of § 4.11.

(g) * * *

(1) * * *

(i) Within 240 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 911 special facility (as defined in § 4.5(e)), in which case they also shall notify the affected 911 facility in the manner described in paragraph (h) of this section; or

* * * * *

(h) *911 special facility outage notification.* All cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers (as defined in § 9.19(a)(4) of this chapter) shall notify any official at a 911 special facility who has been designated by the affected 911 special facility as the provider's contact person(s) for communications outages at the facility of any outage that potentially affects that 911 special facility (as defined in § 4.5(e)) in the following manner:

(1) *Appropriate contact information.* To ensure prompt delivery of outage notifications to 911 special facilities, cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers shall exercise special diligence to identify, maintain, and, on an annual basis, confirm current contact information appropriate for 911 outage notification for each 911 special facility that serves areas that the service provider serves.

(2) *Content of notification.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers' 911 outage notifications must convey all available material information about the outage. For the purpose of this paragraph (h), ''material information'' includes the following, where available:

(i) An identifier unique to each outage;

(ii) The name, telephone number, and email address at which the notifying cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider can be reached for follow up;

(iii) The name of the cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider(s) experiencing the outage;

(iv) The date and time when the incident began (including a notation of the relevant time zone);

(v) The types of communications service(s) affected;

(vi) The geographic area affected by the outage;

(vii) A statement of the notifying cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider's expectations for how the outage potentially affects the 911 special facility (*e.g.,* dropped calls or missing metadata);

(viii) Expected date and time of restoration, including a notation of the relevant time zone;

(ix) The best-known cause of the outage; and

(x) A statement of whether the message is the notifying cable, satellite, wireless, wireline, interconnected VoIP, or covered 911 service provider's initial notification to the 911 special facility, an update to an initial notification, or a message intended to be the service provider's final assessment of the outage.

(3) *Means of notification.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers' 911 outage notifications must be transmitted by telephone and in writing via electronic means in the absence of another method mutually agreed upon in writing in advance by the 911 special facility and the covered 911 service provider.

(4) *Timing of initial notification.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers shall provide a 911 outage notification to a potentially affected 911 special facility as soon as possible, but no later than within 30 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage that potentially affects a 911 special facility, as defined in § 4.5(e).

(5) *Follow-up notification.* Cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers shall communicate additional material information to potentially affected 911 special facilities in notifications subsequent to the initial notification as soon as possible after that information becomes available, but cable, satellite, wireless, wireline and interconnected VoIP providers shall send the first follow-up notification to potentially affected 911 special facilities no later than two hours after the initial contact. After that, cable, satellite, wireless, wireline, interconnected VoIP, and covered 911 service providers are required to continue to provide material information to 911 special facilities as soon as possible after discovery of the new material information until the outage is completely repaired and service is fully restored.

PART 9—911 REQUIREMENTS

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

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, and Section 902 of Title IX, Division FF, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

■ 5. Effective March 17, 2023, amend § 9.19 by adding paragraph (d)(4) to read as follows:

§ 9.19 Reliability of covered 911 service providers.

* * * * *

(d) * * *

(4) Covered 911 service providers that cease operations must notify the FCC by filing a notification under penalty of perjury no later than 60 days after the cessation of service.

[FR Doc. 2023–01479 Filed 2–14–23; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 570

[GSAR–TA–2023–01; Docket No. 2023–0007; Sequence No. 1]

General Services Administration Acquisition Regulation; Immediate and Highest Level Owner for High-Security Leased Space; Technical Amendment

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Technical amendment.

SUMMARY: The General Services Administration is issuing this technical amendment to amend the General Services Administration Acquisition Regulation (GSAR) to make a needed technical amendment. In error, the Code of Federal Regulations (CFR) was not fully updated as a result of the amendment. Therefore, this correcting amendment is issued in order to update the CFR to include the amendatory language not included as originally intended at time of publication of the interim rule (GSAR 2021–G527).

DATES: *Effective:* February 15, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Stephen Carroll, Procurement Analyst, at *GSARPolicy@gsa.gov* or 817–253–7858. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at *GSARegSec@gsa.gov* or 202–501–4755.

SUPPLEMENTARY INFORMATION: On July 1, 2021, GSA amended the General Services Administration Acquisition Regulation (GSAR) through an interim rule (86 FR 34966 [1]). The interim rule for GSAR Case 2021–G527, Immediate and Highest Level Owner for High-Security Leased Space, was issued to implement Section 3 and Section 5 requirements of the Secure Federal Leases from Espionage and Suspicious Entanglement Act (the Act or Secure Federal LEASEs Act). The interim rule amended 48 CFR 501, 552, and 570. 48 CFR 501 and 552 were appropriately updated in the CFR at the time of publication. 48 CFR 570 was not. Therefore, this correcting amendment updates the CFR by adding paragraphs (c) and (d) at GSAR 570.703.

List of Subjects in 48 CFR Part 570

Government procurement.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Governmentwide Policy, General Services Administration.

Therefore, GSA amends 48 CFR part 570 by making the following correcting amendment:

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

■ 1. The authority citation for 48 CFR part 570 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Amend section 570.703 by adding paragraphs (c) and (d) to read as follows:

570.703 GSAR contract clauses.

* * * * *

(c) Insert the representation clause at 552.270–33, Foreign Ownership and Financing Representation for High-Security Leased Space, in novations, solicitations and contracts for leased space that:

(1) Will be occupied by Federal employees for nonmilitary activities; and

(2) Has a facility security level of III, IV, or V.

(d) Insert the clause at 552.270–34 Access Limitations for High-Security Leased Space, in novations, solicitations and contracts for leased space that:

(1) Will be occupied by Federal employees for nonmilitary activities; and

(2) Has a facility security level of III, IV, or V.

[FR Doc. 2023–03143 Filed 2–14–23; 8:45 am]

BILLING CODE 6820–61–P

[1] 86 FR 34966.

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3049 and 3052

[Docket No. DHS–2022–0046]

RIN 1601–AB08

Homeland Security Acquisition Regulation (HSAR); United States Coast Guard Contract Termination Policy (HSAR Case 2020–001)

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: DHS adopts, as final, with minor editorial changes, the proposed rule amending the Homeland Security Acquisition Regulation (HSAR). This rule implements a new subpart and new contract clause to establish contract termination policies for the United States Coast Guard (USCG) and amends a clause to address the applicability of USCG's contract termination policy to commercial items.

DATES: This rule is effective March 17, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Stivaletti-Petty, Procurement Analyst, DHS, Office of the Chief Procurement Officer, Acquisition Policy and Legislation at (202) 447–5639 or email *HSAR@hq.dhs.gov.* When using email, include HSAR Case 2020–001 in the ''Subject'' line.

SUPPLEMENTARY INFORMATION:

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I. Background

The Federal Acquisition Regulations (FAR), found in 48 CFR part 1, is a uniform regulation regarding the acquisition of goods and services for Federal Government agencies. 48 CFR part 12, ''Acquisition of Commercial Products and Commercial Services,'' deals with the acquisition of commercial items, while part 49 discusses the termination of contracts or solicitations. Under 48 CFR 49.101 contracts or solicitations may be terminated, either for convenience or default, only when it is in the government's interest. The use of a termination provision depends on the contract type such as a supply contract, service contract, construction contract, research and development contract and the method of payment, *i.e.,* fixed price or cost type.[1]

Section 3523 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) (14 U.S.C. 1155(a)) requires that before terminating a procurement or acquisition contract with a total value of more than $1,000,000, the Commandant of the Coast Guard shall notify each vendor under such contract and require the vendor to maintain all work product related to the contract until the earlier of—(A) not less than 1 year after the date of the notification; or (B) the date the Commandant notifies the vendor that maintenance of such work product is no longer required.[2]

Specifically, 14 U.S.C. 1155(b) defines ''work product'' to mean: (1) tangible and intangible items and information produced or possessed as a result of a contract and (2) includes—(A) any completed end items; (B) any uncompleted end items; and (C) any property in the contractor's possession in which the United States Government has an interest. Section 1155(c) establishes a penalty such that any vendor that fails to maintain the work product is liable to the United States for a civil penalty of not more than $25,000 for each day on which the work product is unavailable.

II. Discussion of Comments and the Final Rule

The Department of Homeland Security (DHS) did not receive any comments on the proposed rule titled ''Homeland Security Acquisition Regulation (HSAR); United States Coast Guard Contract Termination Policy (HSAR Case 2020–001)'' published on September 7, 2022 (87 FR 54663). With this rule, DHS adds a new subpart regarding contract termination policy for the United States Coast Guard (USCG) in the Homeland Security Acquisition Regulation (HSAR) [3] to

[1] *See* 48 CFR 49.5.

[2] This section of the NDAA was originally codified at 14 U.S.C. 657. However, section 108(b) of the Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. 115–282) subsequently redesignated section 657 as 14 U.S.C. 1155.

[3] The HSAR is issued for Departmental guidance according to the policy cited in the FAR at 48 CFR 1.301. The HSAR establishes uniform DHS policies and procedures for all acquisition activities within the DHS and is issued by the Chief Procurement Officer who is the DHS Senior Procurement Executive. The HSAR is located at 48 CFR chapter 30.

ensure all USCG contractors and subcontractors have access to and comply with Coast Guard's contract termination policies. Thus, it aligns the USCG's contract termination regulatory requirements with 14 U.S.C. 1155, requiring inclusion of the Coast Guard's termination policy and the notification of termination procedures in contracts, including contracts for commercial items, with a total value of more than $1 million. This final rule requires that before terminating a contract with a value of more than $1,000,000, the Commandant of the Coast Guard shall notify the contractor and the contractor shall be required to maintain all work product related to the contract until the earlier of—(1) not less than 1 year after the date of the notification; or (2) the date the Commandant notifies the vendor that maintenance of such work product is no longer required. A contractor that fails to maintain a work product is liable to the United States for a civil penalty of not more than $25,000 for each day on which such work product is unavailable. The USCG must also insert the contract termination policy in all its solicitations and contracts with a total value of more than $1,000,000.

Accordingly, DHS adopts the proposed regulations in the published HSAR proposed rule as final, with two minor editorial changes. The minor changes include updating the clause date in § 3052.212–70 from ''SEP 2012'' to the month this provision will become effective ''MAR 2023''. In addition, we added paragraph headings within §§ 3049.9001 and 3052.249–90 to align with the CFR formatting requirements. The paragraph headings provide information to the public on what each paragraph contains. For a detailed description of the proposed rule changes, please see the proposed rule and section III of this final rule.

III. Regulatory Analyses

A. Executive Orders 12866 and 13563 Assessment

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

The Office of Management and Budget (OMB) has not designated this final rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A regulatory analysis (RA) follows.

DHS did not receive public comments on the regulatory analysis for the proposed rule, so the analysis is the same as set out in the proposed rule.

Table 1 presents a summary of impacts of the final rule.

TABLE 1—SUMMARY OF IMPACTS OF THE FINAL RULE

Category	Summary
Applicability	Addition of contract termination and notification requirements for the Coast Guard in chapter 30 of the HSAR for contracts that are terminated by the Coast Guard, this will apply to new contracts, including contracts for commercial items of more than $1 million.
Affected Population	Contractors and subcontractors whose contracts are terminated by the Coast Guard. Approximately 2 contracts annually.
Costs	There are no new costs of the final rule as its requirements already exist in other regulations and statutes.
Unquantified Benefits	The final rule will provide consistency between existing statutes and regulations for contractors and subcontractors whose contracts are terminated by the Coast Guard.

The Federal Government seeks contractual work with the general public when it wishes to purchase, rent, lease, or otherwise obtain supplies or services from non-Federal sources. The FAR defines this process as ''contracting.'' [4] This final rule revises the HSAR to require Coast Guard to insert termination and notification requirements into its new contracts (this rulemaking would not apply to existing Coast Guard contracts), including contracts for commercial items, with a total value of more than $1 million.

The Coast Guard incorporates contract termination clauses in accordance with the FAR, the HSAR, the Homeland Security Acquisition Manual (HSAM), and the Coast Guard Acquisition Procedures (CGAP) into contracts as applicable and using this clause when deemed necessary for the Coast Guard to exercise its right to do so.

Based on our analysis, we do not estimate that this final rule will impose any new requirements or regulatory costs on contractors and subcontractors who perform contractual work, with a total value of more than $1 million, for the Federal Government. Our analysis also shows that the Federal Government will not incur any new regulatory costs as a result of this final rule. We present a summary of the estimated impacts of the final rule in Table 2.

TABLE 2—FINAL RULE CHANGES AND THE ESTIMATED IMPACTS

HSAR Part or subpart affected	Description of final rule changes	Basis for no cost impact
3049	Removes the term ''Reserved'' in the Homeland Security Acquisition Regulation (HSAR).	Administrative, [5] we do not estimate a cost for this item because it contains the insertion of the text, with no requirements, in part 3049 of the HSAR.

[4] Readers should reference the FAR for a full definition of the term ''contracting''.

TABLE 2—FINAL RULE CHANGES AND THE ESTIMATED IMPACTS—Continued

HSAR Part or subpart affected	Description of final rule changes	Basis for no cost impact
	Adds terms to the HSAR: —''Part 3049'' to Termination of Contracts. —''Subpart 3049.90 Contract Termination (USCG)''. —''3049.9001 Policy (USCG).''. —''3049.9002 Contract Clause (USCG)'', part and subpart titles.	
3049.90	Adds term ''Contract Termination (USCG).''—subpart title, to the HSAR.	Administrative, we do not estimate a cost for this item because it contains the insertion of text, with no requirements, in part 3049 of the HSAR.
3049.9001	Adds term ''Policy (USCG)''—title, to the HSAR	Administrative, we do not estimate a cost for this item because it contains the insertion of text, with no requirements, in part 3049 of the HSAR.
3049.9001(a)	Adds paragraph (a) to the HSAR and will implement requirements of 14 U.S.C. 1155, which provides contract termination policy for procurement or acquisition contracts, including commercial contracts greater than $1 million.	We do not estimate a cost for this regulatory provision because the FAR, title 48 of the CFR, currently requires the Federal Government to include similar language in applicable Federal contracts. Termination and notification requirements are addressed in subpart 49.1 of the FAR. The statutory language for contract termination is currently in 14 U.S.C. 1155(a)(1) for all contracts, including commercial contracts, with a total value of more than $1 million.
3049.9001(b)	Adds paragraph (b) to the HSAR, ''Notification''—title Paragraph will implement requirements of 14 U.S.C. 1155, which states the Commandant of the Coast Guard must notify the contractor before terminating a procurement or acquisition contract of greater than $1 million and the contractor must maintain work product as specified in the Code.	We do not estimate a cost for this regulatory provision because subpart 49.1 of the FAR currently contains notification requirements for the Federal Government. The statutory language for notification of contract termination is currently in 14 U.S.C. 1155(a)(1) for procurement or acquisition contracts of more than $1 million (14 U.S.C. 1155(b) defines work product). Maintaining of records is required by subpart 4.7 of the FAR. The Federal Government is currently required to include similar language in applicable Federal contracts.
3049.9001(c)	Adds paragraph (c) ''Work Product Defined''—title, to the HSAR.	Administrative—we do not estimate a cost for the addition of this regulatory provision because there is no requirement, 14 U.S.C. 1155 currently contains the definition of the term ''work product''.
3049.9001(d)	Adds paragraph (d) ''Penalty''—title, to the HSAR	We do not estimate a cost for this provision because 14 U.S.C. 1155 currently contains the statutory language for ''penalty''. This item has not been levied for past Coast Guard contracts since the statute was enacted in 2019.
3049.9001(e)	Adds paragraph (e) to the HSAR, which states the substance of the clause shall be inserted by the contractor in contracts and subcontracts and for commercial items with a total value of more than $1 million.	We do not estimate a cost for this provision because subpart 49.5 of the FAR requires the contracting officer to insert similar language in applicable contracts. The relevant clauses are in sections 52.249–1 through 52.249–10 of the FAR.
3049.9002	Adds the term ''Contract Clause (USCG)''—title, to the HSAR; states Coast Guard contracting officers shall insert the clause at 3052.249–90 in all solicitations and contracts, including commercial items with a total value of more than $1 million.	Administrative—we do not estimate a cost for the addition of the title to this subpart of the HSAR. We do not estimate a cost for this regulatory provision itself because the contracting officer of the Coast Guard currently inserts similar language in applicable contracts, including contracts for commercial items, with a total value of more than $1 million.
3052	In subpart 3052.2 of the HSAR, ''Texts of Provisions and Clauses'', adds term ''3052.249–90 Contract Termination (USCG)''.	Administrative—we do not estimate a cost for this item because it includes the insertion of the regulatory text, with no requirements, in part 3052 of the HSAR.
3052.249–90	—Adds text ''Contract Termination (USCG)''—title, to part 3052 of the HSAR. —Adds sentence to part 3052 of the HSAR, ''As prescribed in the USCG guidance at (HSAR) 48 CFR 3049.9002, insert the following clause.'' —Adds text ''Contract Termination (USCG) (March 2023)'' and paragraphs (a) through (e) to part 3052 of the HSAR.	Administrative—we do not estimate a cost for the insertion of the regulatory text that will be added to part 3052 of the HSAR. We do not estimate costs for the regulatory text in paragraphs (a) through (e) of this subpart because the requirements are currently contained in subpart 49.5 of the FAR. The statutory language currently exists in 14 U.S.C. 1155. The requirements are also in 3049.9001(a) through (e).
3052.212–70	Adds term ''3052.249–90 Contract Termination (USCG)'' to the HSAR. Updates date of clause provision.	Administrative—we do not estimate a cost for this item because it contains the insertion of the regulatory text, with no requirements, in part 3052 of the HSAR.

[5] We use the term ''administrative'' to mean editorial changes or changes to the regulatory text that contain no regulatory requirements or impacts to the affected population of the final rule. The provisions we identified as ''administrative'' in Table 2 do not have quantifiable costs, cost savings, or benefits associated with them. See Table 1 for the unquantified benefits of the final rule.

B. Affected Population

The affected population of this final rule is a contractor (if a contractor enters into a contract with a subcontractor, then the subcontractor is counted as part of the main or primary contract) whose contract is terminated by the Coast Guard; this would apply only to a contract, including a commercial contract, with a total value of more than $1 million.

DHS and the Coast Guard worked collaboratively to provide the information for this regulatory analysis. The Coast Guard collected acquisition data from the Coast Guard's Office of Procurement Policy and Oversight to obtain the population or the number of contracts it has acquired over the past 11 years. To collect this acquisition data, the Coast Guard used the Federal Procurement Data System-Next Generation (FPDS–NG) database.[6] The Coast Guard acquired a total of 7,228 contracts, including commercial items, with a total value of more than $1 million, from fiscal year 2010 (FY 2010) through fiscal year 2020 (FY 2020), which ended on September 30, 2020. Included in this number are an unknown number of subcontracts. For accounting purposes, the Coast Guard counts the main contract or the contract it awards as the primary contract, along with subcontracts, if applicable, as 1 contract.[7] During this period of time, the Coast Guard terminated 25 contracts with a value of more than $1 million, or an average of about 2.3 contracts a year.

Of the 7,228 total contracts, the Coast Guard awarded contracts to 3,947 small businesses.[8] Out of the 25 contracts, including commercial contracts, with a value of more than $1 million, that the Coast Guard terminated during this period of time, 8 of them were associated with small businesses. This is an average of less than 1 small business contract a year being terminated by the Coast Guard. (We discuss the impacts to small entities in section IV, ''Regulatory Flexibility Act'', of this ''Regulatory Analysis.'')

C. Cost Analysis of the Final Rule

This final rule will not impose any new regulatory costs on contractors, subcontractor, and the Federal Government because the requirements of this final rule currently exist in the FAR and in the statute (see 48 CFR chapter 1). We explain our reasoning below for each regulatory provision of this final rule. However, the FAR does not contain the penalty clause that exists in 14 U.S.C. 1155 that we will implement in section 3049.9001, paragraph (d).

We do not estimate a cost for the items we identified as ''administrative'' in Table 2 because they will contain the addition of the regulatory text in the HSAR. This includes adding part, subpart, and section titles to the HSAR. This covers 48 CFR part 3049, subpart 3049.90 (with sections 3049.9001 and 3049.9002), part 3052, and 3052.212–70 of the HSAR (see Table 2).

Subpart 3049.90 of the HSAR will contain the contract termination policy and notification of termination requirements for the Coast Guard.

Section 3049.9001 implements the requirements of the NDAA. Paragraph (a) implements the current statutory language in 14 U.S.C. 1155(a)(1), which provides the contract termination policy for Coast Guard contracts, including contracts for commercial items, with a total value of more than $1 million. Additionally, subpart 49.1 (49.101) of the FAR currently provides the authority for Federal agencies and more specifically contracting officers to terminate contracts ''. . . for the convenience of the Government, or for default . . .''. Because this final rule uses the statutory language, which supplements the existing regulatory requirement for contract termination of subpart 49.1 of the FAR, we do not estimate a cost for this final change.

Paragraph (b) of section 3049.9001 contains the notification requirement for the Commandant of the Coast Guard to notify the contractor before terminating a contract, including contracts for commercial items, with a total value of more than $1 million, and for the contractor to maintain all work product related to the contract until the earlier of—

(1) Not less than 1 year after the date of notification; or

(2) The date the Commandant notifies the vendor that maintenance of such work product is no longer required.

Title 14 U.S.C. 1155(a)(1), currently provides the statutory authority for the Commandant of the Coast Guard to notify the contractor before terminating a procurement or acquisition contract with a total value of more than $1 million. It also states the contractor must maintain all work product related to the contract as we previously mentioned. Subpart 49.1, specifically section 49.102 of the FAR currently contains the regulatory requirement that Federal contracting officers notify the contractor before terminating a contract for convenience or default. Title 14 U.S.C. 1155 does not specify the method of notification; however, the FAR states it must be by written notice or it ''may be expedited by means of electronic communication capable of providing confirmation of receipt by the contractor''. It has been the past (and current) practice of the Coast Guard to notify contractors of contract termination by electronic means and for the contractor to reply by electronic means; therefore, this is not a new requirement, and it will not impose any new costs on the contractor and the Coast Guard for this method of notification. Because the rule uses the statutory language for the notification of contract termination, which section 49.102 of the FAR allows by electronic means, we do not estimate a cost for this final change (the statutory language for this provision also exists in 14 U.S.C. 1155).

We also do not estimate a cost for the requirement of the contractor to maintain all work product related to the contract because 14 U.S.C. 1155(b) statutorily requires the contractor to perform this function for the timeframe specified in the statute. Furthermore, subpart 4.7 [specifically sections 4.703(a) through (d)] of the FAR requires a contractor to retain records for the time specified in these regulations (readers should refer to subpart 4.7 of the FAR for contractor records retention).

Additionally, this is not a new Information Collection Request (ICR)

[6] The Federal Government retains data on Federal procurements through the FPDS–NG. Readers can reference the FPDS–NG website for information on the procurement of Federal contracts at: *https://www.gsa.gov/tools-overview/buying-and-selling-tools/federal-procurement-data-system.*

[7] A fiscal year in the Federal Government is the period of time from October 1 in one calendar year to September 30 of the following calendar year. It is the accounting period when Federal agencies submit budget requests to the Office of Management and Budget (OMB) for planning and operational purposes. The data we collected are through fiscal year 2020; the Coast Guard generally awards contracts, through its budget and acquisition process, in the preceding fiscal year for the following fiscal year.

[8] When a small business wishes to obtain a Federal contract, it can do so by ''self-certification'' on the Small Business Administration's (SBA) website before it registers for contract opportunities with the Federal Government. Readers can learn more about this process using the General Services Administration's (GSA) website at: *https://www.gsa.gov/small-business#gsa-now.* A small business is one that meets SBA's size standards based upon the North American Industry Classification System (NAICS). Readers can reference SBA's table of size standards and the NAICS codes at: *https://www.sba.gov/document/support-table-size-standards.* For more information on NAICS codes, readers should reference the U.S. Census Bureau's website at: *https://www.census.gov/naics/.* Small businesses may also obtain Federal contracts through GSA's ''One Acquisition Solution for Integrated Services'' (OASIS) Small Business (OASIS SB) contracts, see: *https://www.gsa.gov/buying-selling/products-services/professional-services/buy-services/oasis-and-oasis-small-business.*

nor will it amend an existing ICR under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501).[9] The rule uses the statutory language, codified in 14 U.S.C. 1155, in the HSAR and will ensure the contractor maintains the work product for the timeframes specified in the statute. Lastly, because the Coast Guard terminated an average of about 2 contracts a year over the past 11 years, this number does not exceed the threshold of 10 or more persons for a collection of information as defined in 5 CFR part 1320.[10]

Paragraph (c) of 3049.9001 states the definition of the term ''work product'' and will be titled ''Work Product Defined.'' We classify this as an administrative provision without a regulatory requirement. We do not estimate a cost for this provision because this final rule will add this definition to the HSAR, which is codified in the statute in 14 U.S.C. 1155.

Paragraph (d) of 3049.9001 contains the penalty a contractor would incur if it fails to maintain the work product defined in paragraph (c) of this section. The Coast Guard does not believe it is likely it will levy this penalty in the future because for the contracts that it has terminated, the Coast Guard has generally been able to access the maintained work product when necessary. Because this regulatory language is codified in the statute in 14 U.S.C. 1155, we do not estimate a cost for this final change to the HSAR.

Paragraph (e) of 3049.9001 contains the requirement for the contractor to insert the substance of the clause into contracts and subcontracts, including contracts and for commercial items with a total value of more than $1 million. Subpart 49.5 (''Contract Termination Clauses'') of the FAR requires contracting officers to insert the substance of the clause into solicitations and contracts as specified in the statute. As a result, we classify this regulatory language and addition to the HSAR as an administrative item; therefore, we do not estimate a cost for this final change.

The final rule adds section 3049.9002, ''Contract Clause (USCG)'', to subpart 3049.90 of the HSAR. It states Coast Guard contracting officers shall insert the clause at 3052.249–90, ''Contract Termination (USCG)'', in all solicitations and contracts, including contracts for commercial items, with a total value of more than $1 million. Similar to the paragraph (e) of subpart 3049.9001, the contracting officer of the Coast Guard is required in subpart 49.5 of the FAR to insert this language into all solicitations and contracts.[11] As a result, we classify this regulatory language and addition to the HSAR as an administrative item; therefore, we do not estimate a cost for this change.

Lastly, the final rule will add section 3052.249–90, ''Contract Termination (USCG)'', to the HSAR. We classify this change as an administrative item, which adds the regulatory language with the same requirements that are contained in section 3049.9001, paragraphs (a) through (e) of HSAR. As a result, we do not estimate a cost for this change (see table 2 for a summary of these changes).

D. Benefit Analysis of the Final Rule

The primary benefit of this rule is to provide contractors and subcontractors, a consistent regulatory environment between the U.S.C., the FAR, and the HSAR, in the event the Coast Guard terminates a contract, including contracts for commercial items, with a total value of more than $1 million. The regulatory consistency also includes the notification of termination to a contractor by the Commandant of the Coast Guard. The HSAR will contain the requirement of the U.S.C. for the contractor to maintain the work product specified and the penalty to be levied against a contractor for not maintaining the work product as defined in the statute.

E. Alternatives of the Final Rule

DHS considered two alternatives to this rule. Neither alternative would align the HSAR with the statutory requirements of 14 U.S.C. 1155, nor would they provide the consistent regulatory environment of the chosen alternative.

1. *No Action Alternative.* We rejected this alternative because the HSAR would not align with the relevant statute, which contain the statutory requirements for contract termination and notification for the Coast Guard, specifically, the National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115–232), 14 U.S.C. 1155, and subpart 49.5 of the FAR.[12] The statutory requirements are applicable to contracts, including contracts for commercial items, with a total value of more than $1 million. The HSAR would also not contain the requirement for the contractor to maintain the work product as defined in the U.S.C. Lastly, the HSAR would not contain the penalty specified in the U.S.C. levied against a contractor for not maintaining the work product.

2. *Issue a policy letter referencing the FAR and the U.S.C. for contract termination policy and notification for the Coast Guard.* We rejected this alternative because the policy letter would not revise the HSAR and thus it would not contain the requirements found in 14 U.S.C. 1155. A policy letter would merely provide guidance for contractors regarding the Coast Guard's contract termination policy, including the penalty clause, and notification procedures for requirements that currently exist in the relevant statutes and regulations. There would be no costs associated with this alternative.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will not impose any new requirements or costs on small entities. This rule codifies the Coast Guard's termination policy and the notification of termination procedures for contracts, including contracts for commercial items, with a total value of more than $1 million, into DHS' HSAR. The requirements for contract termination and notification are currently in subpart 49.5 of the FAR and 14 U.S.C. 1155.

The Coast Guard collected data on contracts it terminated over the past 11 years, including contracts for commercial items, with a total value of more than $1 million. Over this period of time, the Coast Guard terminated 8 contracts (or less than 1 a year on average) awarded to small businesses that met this total dollar value. Although these 8 companies registered as a ''small business'' with the SBA in

[9] Readers should reference the PRA for further information at: *https://www.govinfo.gov/content/pkg/PLAW-104publ13/html/PLAW-104publ13.htm.*

[10] Readers should reference the CFR for a full definition of the term ''collection of information'' and for further information on controlling paperwork burdens on the public at: *https://www.govinfo.gov/content/pkg/CFR-2010-title5-vol3/xml/CFR-2010-title5-vol3-part1320.xml.*

[11] The final rule includes all Coast Guard contracts. The Coast Guard, however, issues primarily fixed-price contracts or firm fixed-price contracts. The FAR defines fixed-price contracts as types of contracts that ''. . . provide for a firm price or, in appropriate cases, an adjustable price . . . the contracting officer shall use firm fixed-price or fixed price with economic price adjustment contracts when acquiring commercial items, except as provided in 12.207(b)''. Readers should refer to the FAR for information about other types of contracts.

[12] For further information, readers should reference the NDAA for fiscal year 2019 at: *https://www.congress.gov/115/bills/hr5515/BILLS-115hr5515enr.pdf.*

order to obtain a contract with the Federal Government as a small business, we researched these companies to determine the type of small entity that they are in order to correctly classify them in this Regulatory Flexibility Act (RFA) analysis. This is necessary because a ''small business'' is one type of small entity as stated previously in this section.

We obtained the NAICS codes from the FPDS–NG for all 8 companies. We found company-specific information on 6 of the 8 companies by using the publicly-available online database of businesses in the United States, *ReferenceUSAgov.com* (we did not find revenue or employee information for 2 companies, and assumed they are small).[13] Nevertheless, based on each company's NAICS code, and using SBA's table of size standards for each NAICS code, we found all of the 8 companies, who had contracts with a total value of more than $1 million that were terminated by the Coast Guard, to be small businesses, and not governmental jurisdictions or not-for-profit organizations that are independently owned and operated and are not dominant in their fields.

As noted above, that the Coast Guard terminated an average of less than 1 contract a year (over the past 11 years) that was associated with a small entity and that the rule will not impose any new requirements or costs on small entities. Therefore, DHS certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires agencies to consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions.

DHS has determined that there is no new requirement for information collection associated with this rule. This rule will not change the burden in the collections currently approved by OMB under OMB Control Numbers, 1600–0002, ''Various Contract Related Forms that will be Included in the Homeland Security Acquisition Regulation'', 1600–0003, ''Post-Contract Award Information'', and 1600–0005, ''Solicitation of Proposal Information for Award of Public Contracts''. There are no Coast Guard Information Collection Requests (ICRs) associated with non-Federal contracts.

[13] We accessed this database in October 2021. *https://www.referenceusagov.com/Home/Home.*

VI. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Department in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under paragraph A3 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev 1. Paragraph A3 pertains to promulgation of rules that are an administrative or procedural nature or those that implement, without substantive change, statutory or regulatory requirements. This rule involves adopting a statutorily required contract cancelation provision that outline the Coast Guard's procedural requirements for canceling applicable contracts.

List of Subjects in 48 CFR Parts 3049 and 3052

Government procurement.

Paul Courtney,

Chief Procurement Officer, Department of Homeland Security.

Therefore, DHS amends 48 CFR chapter 30 as follows:

■ 1. Add part 3049 to read as follows:

PART 3049—TERMINATION OF CONTRACTS

Subpart 3049.90—Contract Termination (USCG)

Sec.

3049.9001 Policy (USCG).
3049.9002 Contract clause (USCG).

Authority: 14 U.S.C. 1155.

3049.9001 Policy (USCG).

(a) *Applicability.* This section implements 14 U.S.C. 1155 and provides the policy for the USCG to use for contract terminations. This contract termination policy applies to USCG contract terminations, including contracts for commercial items, with a total value of more than $1,000,000.

(b) *Notification.* Before terminating a contract with a total value of more than $1,000,000, the Commandant of the Coast Guard shall notify the contractor and the contractor shall be required to maintain all work product related to the contract until the earlier of—

(1) not less than 1 year after the date of the notification;

or

(2) the date the Commandant notifies the vendor that maintenance of such work product is no longer required.

(c) *Work Product Defined.* The term ''work product''—

(1) Means tangible and intangible items and information produced or possessed as a result of a contract referred to in subsection (b); and

(2) Includes—

(i) Any completed end items;

(ii) Any uncompleted end items; and

(iii) Any property in the Contractor's possession in which the United States Government has an interest.

(d) *Penalty.* A Contractor that fails to maintain work product as required under subsection (b) is liable to the United States for a civil penalty of not more than $25,000 for each day on which such work product is unavailable.

(e) *Requirement.* The Contractor shall insert the substance of this clause in contracts and subcontracts, including contracts and for commercial items, with a total value of more than $1,000,000.

3049.9002 Contract clause (USCG).

USCG contracting officers shall insert the clause at 3052.249–90, Contract Termination (USCG), in all solicitations and contracts, including contracts for commercial items, with a total value of more than $1,000,000.

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. The authority citation for part 3052 is revised to read as follows:

Authority: 5 U.S.C. 301–302, 14 U.S.C. 1155, 41 U.S.C. 1303, 41 U.S.C. 1707, 41 U.S.C. 1702, and 48 CFR subpart 1.3.

■ 3. Amend § 3052.212–70 by:

■ a. Revising the heading of the clause; and

■ b. In paragraph (b), add an entry for ''HSAR 3052.249–90'' at the end of the list of clauses in the second Alternate I.

The revision and addition read as follows:

3052.212–70 Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items.

Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items (Mar 2023)

* * * * *

(b) * * *

Alternate I * * *

____HSAR 3052.249–90 Contract Termination (USCG).

* * * * *

■ 4. Add section 3052.249–90 to subpart 3052.2 to read as follows:

3052.249–90 Contract Termination (USCG).

As prescribed in the USCG guidance at (HSAR) 48 CFR 3049.9002, insert the following clause:

Contract Termination (USCG) (Mar 2023)

(a) This contract is subject to Section 3523 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), 14 U.S.C. 1155, pertaining to contract terminations for the United States Coast Guard (USCG).

(b) *Notification.* As required by 14 U.S.C. 1155(b), before terminating a contract with a total value of more than $1,000,000, the Commandant of the Coast Guard shall notify the contractor and the contractor shall be required to maintain all work product related to the contract until the earlier of—

(1) not less than 1 year after the date of the notification;

or

(2) the date the Commandant notifies the vendor that maintenance of such work product is no longer required.

(c) *Work Product Defined.* In this clause the term ''work product''—

(1) means tangible and intangible items and information produced or possessed as a result of a contract referred to in subsection (b); and

(2) includes—

(i) any completed end items;

(ii) any uncompleted end items; and

(iii) any property in the Contractor's possession in which the United States Government has an interest.

(d) *Penalty.* A Contractor that fails to maintain work product as required under subsection (b) is liable to the United States for a civil penalty of not more than $25,000 for each day on which such work product is unavailable.

(e) The Contractor shall insert the substance of this clause in contracts and subcontracts, including contracts for commercial items, with a total value of more than $1,000,000.

(End of clause)

[FR Doc. 2023–02318 Filed 2–14–23; 8:45 am]

BILLING CODE 4410–10–P

Proposed Rules

Federal Register
Vol. 88, No. 31
Wednesday, February 15, 2023

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0157; Project Identifier AD–2022–01309–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–8 series airplanes. This proposed AD was prompted by a report of stress corrosion cracking in certain stringers and end stringer splice assemblies. This proposed AD would require repetitive inspections of the stringers and end stringer splice assemblies for any crack, shim, or gap, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 31, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0157; 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 NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.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* by searching for and locating Docket No. FAA–2023–0157.

FOR FURTHER INFORMATION CONTACT: Stefanie N. Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0157; Project Identifier AD–2022–01309–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Stefanie N. Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating cracks found on end stringers of two Model 747–8 airplanes at station (STA) 2285, left and right sides, during foreign object debris (FOD) inspections in preparation for airplane modification. Boeing has also reported similar cracking on other Model 747–8 airplanes. The cracks were not visually detectable until the stringer splice assemblies were removed. The root cause was found to be stress corrosion cracking caused by excessive and sustained internal tensile stresses that were due to no shim being installed or shimmed gaps exceeding engineering limits at production. A crack in a stringer or end stringer splice assembly could grow in length and go undetected. This condition, if not addressed, could result in the inability of a structural element to sustain limit load and could adversely affect the structural integrity of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or

develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022. This service information specifies procedures for repetitive detailed inspections of the stringers and the end stringer splice assemblies at stringers S–17 to S–25 from STA 2285 to STA 2300 main entry door #5 cutout aft edge frame for any crack, any shim between a stringer and bear strap, and any gap within the fastener-joint-to-bear-strap joint, and applicable on-condition actions. On-condition actions include detailed inspections of the stringers and end stringers splice assemblies located between STA 2285 and STA 2300 from stringers S–17L to S–25L/S–17R to S–25R, open hole high frequency eddy current (HFEC) inspection of the fastener holes of the skin common to the end stringer splice fitting for cracks, and repair of cracked stringer/end stringer splice fittings.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2023–0157.

Clarification of Terminating Action

Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022, contains a terminating action flagnote (b) in Tables 1 through 4 of the Accomplishment Instructions that specifies ''Doing the detailed and High Frequency Eddy Current (HFEC) inspections and finding no crack as a result of the inspection is terminating action to Requirements Bulletin 747–53A2909 RB for that affected end stringer splice assembly.'' However, the flagnote ''(b)'' is located with certain conditions in Tables 1 through 4 and appears to be contradictory in certain locations, *e.g.,* ''Condition 8.2: No crack found as a result of option 2 inspections'' specifies to do repetitive inspections; however the option 2 inspections are the detailed and HFEC inspections, which the flagnote specifies is terminating action. The FAA has clarified the terminating action in paragraphs (g)(1) through (4) of this proposed AD to confirm that no action is required for an end stringer splice assembly on which no cracking is found after the specified option 2 inspections are done.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed Inspection (S–17L to S–25L) and (S–17R to S–25R).	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle	$680 per inspection cycle.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these on-condition actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Detailed Inspection and Open Hole (HFEC) Inspection per side.	54 work-hours × $85 per hour = $4,590	$0	$4,590
Repair of cracked stringer/end stringer splice fitting	13 work-hours × $85 per hour = $1,105	600	1,705

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

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

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 this proposed regulation:

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

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

(3) Would 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 Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2023–0157; Project Identifier AD–2022–01309–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 31, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–8 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of stress corrosion cracking in the stringers and end stringer splice assemblies located between station (STA) 2285 and STA 2300 from stringers S–17 to S–25 on the left and right sides of the airplane caused by excessive and sustained internal tensile stresses that were due to no shim being installed or shimmed gaps exceeding engineering limits at production. A crack in a stringer or end stringer splice assembly could grow in length and go undetected. The unsafe condition, if not addressed, could result in the inability of a structural element to sustain limit load and could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022. For this AD, terminating action for certain end stringer springer splice assemblies are specified in paragraphs (g)(1) through (4) of this AD.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2909 RB, dated September 21, 2022, which is referred to in Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022.

(1) For any end stringer splice assembly on which no cracking is found after accomplishing CONDITION 3 (OPTION 2) (ACTION 1) and CONDITION 3 (OPTION 2) (ACTION 2) inspections specified in Table 1 of the Accomplishment Instruction of Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022, no further action is required by this AD for that end stringer splice assembly.

(2) For any end stringer splice assembly on which no cracking is found after accomplishing CONDITION 6 (OPTION 2) (ACTION 1) and CONDITION 6 (OPTION 2) (ACTION 2) inspections specified in Table 2 of the Accomplishment Instruction of Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022, no further action is required by this AD for that end stringer splice assembly.

(3) For any end stringer splice assembly on which no cracking is found after accomplishing CONDITION 8 (OPTION 2) (ACTION 1) and CONDITION 8 (OPTION 2) (ACTION 2) inspections specified in Table 3 of the Accomplishment Instruction of Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022, no further action is required by this AD for that end stringer splice assembly.

(4) For any end stringer splice assembly on which no cracking is found after accomplishing CONDITION 10 (OPTION 2) (ACTION 1) and CONDITION 10 (OPTION 2) (ACTION 2) inspections specified in Table 4 of the Accomplishment Instruction of Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022, no further action is required by this AD for that end stringer splice assembly.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time column and certain notes of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022, use the phrase ''the original issue date of Requirements Bulletin 747–53A2909 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Stefanie N. Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–53A2909 RB, dated September 21, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(4) 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.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA,

fr.inspection@nara.gov, or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on January 27, 2023.

Christina Underwood,

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

[FR Doc. 2023–03138 Filed 2–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0165; Project Identifier MCAI–2022–01003–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–24–13, which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2019–24–13 requires repetitive high-frequency eddy current (HFEC) inspections for cracking of a stiffener of a certain lateral window frame, and applicable related investigative and corrective actions, as applicable. Since the FAA issued AD 2019–24–13, it was determined that certain inspection times need to be revised. This proposed AD would retain the requirements of AD 2019–24–13, with amended compliance times, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 3, 2023.

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

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

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–0165; 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 NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this NPRM, you may contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–0165.
- 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.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *Dan.Rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0165; Project Identifier MCAI–2022–01003–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *Dan.Rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019–24–13, Amendment 39–21002 (84 FR 71788, December 30, 2019) (AD 2019–24–13), for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2019–24–13 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2019–0067R1, dated September 11, 2019 (EASA AD 2019–0067R1), to correct an unsafe condition.

AD 2019–24–13 requires repetitive HFEC inspections for cracking of a stiffener of a certain lateral window frame, and rework, repair, or replacement of the lateral window frame, as applicable, as specified in EASA AD 2019–0067R1. The FAA issued AD 2019–24–13 to address cracking of the horizontal upper stiffener of the lateral window frame, which could reduce the structural integrity of the fuselage.

Actions Since AD 2019–24–13 Was Issued

Since the FAA issued AD 2019–24–13, EASA superseded EASA AD 2019–0067R1 and issued EASA AD 2022–0151, dated July 26, 2022 (EASA AD 2022–0151) (also referred to as the MCAI), to correct an unsafe condition on certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that several occurrences were reported where, during a maintenance check, cracks were found in the horizontal upper stiffener of the lateral window frame at the frame 4 upper attachment. Since EASA AD 2019–0067R1 was issued, it was determined that the embodiment of Airbus production modification (mod) 161229 does not provide any benefit versus the pre-mod 161229 configuration, and Airbus issued revised service information to remove the credit and higher inspection threshold for post-mod 161229 airplanes. In addition, based on new calculations, the inspection interval was increased. The unsafe condition, if not addressed, could reduce the structural integrity of the fuselage.

The FAA is proposing this AD to address cracking of the horizontal upper stiffener of the lateral window frame, which could reduce the structural integrity of the fuselage. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0165.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2019–24–13, this proposed AD would retain the requirements of AD 2019–24–13. Those requirements are referenced in EASA AD 2022–0151, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0151 specifies procedures for repetitive HFEC inspections of the horizontal upper stiffener of the lateral window frame on the right-hand (RH) and left-hand (LH) sides for any cracking and applicable related investigative and corrective actions. Related investigative and corrective actions include repair, replacement, and rework. EASA AD 2022–0151 also specifies reporting to Airbus if any discrepancies (cracking) are found during the inspections.

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.

FAA's Determination

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 the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0151 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0151 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0151 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0151 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0151. Service information required by EASA AD 2022–0151 for compliance will be available at regulations.gov under Docket No. FAA–2023–0165 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,528 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2019–24–13	9 work-hours × $85 per hour = $765	$0	$765	$987,615
New proposed actions	6 work-hours × $85 per hour = $510	$0	$510	$779,280

The FAA estimates the following costs to do any necessary on-condition rework, replacement, or reporting that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
Up to 543 work-hours × $85 per hour = $46,155	Up to $107,370	$153,525

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

According to the manufacturer, some or all of the costs of this proposed 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.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not 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 displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 this proposed regulation:

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

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

(3) Would 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 Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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) 2019–24–13, Amendment 39–21002 (84 FR 71788, December 30, 2019); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–0165; Project Identifier MCAI–2022–01003–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 3, 2023.

(b) Affected ADs

This AD replaces AD 2019–24–13, Amendment 39–21002 (84 FR 71788, December 30, 2019).

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0151, dated July 26, 2022 (EASA AD 2022–0151).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report that during a maintenance check, cracks were found in the horizontal upper stiffener of the lateral window frame at the frame 4 upper attachment, and a determination that certain compliance times need to be revised. The FAA is issuing this AD to address cracking of the horizontal upper stiffener of the lateral window frame. The unsafe condition, if not addressed, could reduce the structural integrity of the fuselage.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0151.

(h) Exceptions to EASA AD 2022–0151

(1) Where EASA AD 2022–0151 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0151.

(3) Paragraph (7) of EASA AD 2022–0151 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report

within 90 days after the effective date of this AD.

(4) Where EASA AD 2022–0151 specifies to perform corrective actions if ''discrepancies are detected, as identified in the inspection SB,'' for this AD perform corrective actions if cracking is detected.

(5) Where paragraph (2) of EASA AD 2022–0151 specifies to ''accomplish the applicable corrective action(s)'' if discrepancies are detected, for this AD if any cracking is detected and the stiffener has already been reworked, or if any cracking is not removed after a third rework of the horizontal upper stiffener, the cracking must be repaired before further flight 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.

(i) 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 (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2019–24–13 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0151 that are required by paragraph (g) of this AD.

(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 (i)(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.

(j) Additional Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *Dan.Rodina@faa.gov.*

(k) 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.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0151, dated July 26, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0151, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) 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.

(5) You may view this service information 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 February 9, 2023.

Christina Underwood,

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

[FR Doc. 2023–03141 Filed 2–14–23; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2021–0014]

RIN 0960–AI60

Omitting Food From In-Kind Support and Maintenance Calculations

AGENCY: Social Security Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: We propose to update our regulations to remove food from the calculation of In-Kind Support and Maintenance (ISM). We also propose to add conforming language to our definition of income, excluding food from the ISM calculation. Accordingly, Supplemental Security Income (SSI) applicants and recipients would no longer need to provide information about their food expenses for us to consider in our ISM calculations. We expect that these changes will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow. These simplifications would make it easier for SSI applicants and recipients to comply with our program requirements, which would save time for both them and us, and improve the equitable treatment of food assistance within the SSI program. The proposed rule also includes other, minor revisions to the regulations related to income, including clarifying our longstanding position that income may be received ''constructively'' (we will define this term below).

DATES: To ensure that your comments are considered, we must receive them no later than April 17, 2023.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2021–0014 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the ''search'' function to find docket number SSA–2021–0014. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to one week for your comment to be viewable.

2. *Fax:* Fax comments to 1–833–410–1631.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, 3rd Floor (East) Altmeyer Building, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Tamara Levingston, Office of Income Security Programs, 6401 Security Blvd., Robert M. Ball Building, Suite 2512B,

Woodlawn, MD 21235, 410–966–7384. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We administer the Supplemental Security Income (SSI) program. SSI provides monthly payments to: (1) adults and children with a disability or blindness; and (2) adults age 65 and older. These individuals must meet multiple eligibility requirements, including having resources and income below specified amounts.[1] Resources are cash or other liquid assets, or any real or personal property that individuals (or their spouses, if any) own and could convert to cash to be used for their support and maintenance.[2] Income is anything the applicant or recipient receives in cash or in-kind that can be used to meet food and shelter needs.[3] Applicants' and recipients' resources may affect their SSI eligibility, while their income may affect both their eligibility and payment amounts.

Once a claimant is found eligible for SSI, their monthly payment is determined by subtracting countable income from the Federal benefit rate (FBR), which is the monthly maximum Federal SSI payment.[4] The FBR for 2023 is $914 for an individual and $1,371 for an eligible individual with an eligible spouse.[5]

Typically, after the first $65 earned each month, a recipient's SSI benefit will be reduced 50 cents for every $1 of *earned* income. For example, a recipient who earns $101 each month from a part-time job would receive $896 in monthly benefits in 2023. This is calculated by excluding the first $65 of the $101 earned ($36 remaining) and then reducing the SSI payment by half of that amount—an $18 reduction against the original payment of $914. Additionally, for income that is *unearned* (for example, cash received from a family member), after the first $20 received each month, for each dollar of unearned income a recipient's SSI payment is reduced by $1. For example, a recipient who received $50 from a grandparent each month would receive in $884 in monthly SSI benefits. This is calculated by excluding the first $20 of the $50 received ($30 remaining) and then reducing the SSI payment by that amount—a $30 reduction against the original payment of $914.

Income that affects the monthly benefit amount can be provided in cash or in-kind. Generally, we assess in-kind items at their current market value[6] under the presumption that they can be sold or otherwise converted to meet expenses. However, we treat the actual provision of in-kind contributions of food or shelter to an applicant or recipient differently than any other type of in-kind item.

Specifically, when food,[7] shelter, or both are provided to an SSI applicant or recipient (*e.g.,* someone pays for rent, mortgage, food, or utilities), we consider it ''in-kind support and maintenance'' (ISM).[8] For example, if an applicant or recipient lives with his brother and does not pay rent, we would consider the shelter that his brother provides as ISM. Similarly, if an applicant or recipient lives with a friend and consumes the food in her friend's home but does not contribute toward the food or rent, we consider the food and shelter that the friend provides as ISM. As another example, if an applicant or recipient lives alone but her parents bring her groceries each month and pay her utility bills, we consider her parents' help as ISM.

In these circumstances, due to the complexity of determining the precise value of ISM and how these forms of support impact overall household operating expenses for a given individual, we typically reduce the SSI benefit by approximately one-third.[9] We discuss the specific means of doing so in the next section.

Because ISM requires that applicants or recipients receive food, shelter, or both, by definition, ISM does not apply if applicants or recipients live alone and pay for their own food and shelter, or if they live with other people and pay their pro rata share of the food and shelter expenses.[10] Further, ISM does not apply when applicants or recipients live only with a spouse and minor children, and nobody outside the household pays for their food and shelter, regardless of whether the spouse or minor child provides food or shelter.[11] Additional circumstances are discussed further in our regulations.[12]

Like other forms of income, ISM can reduce the amount of SSI benefits. When ISM applies, we determine its value using one of two rules: (1) the Value of the One-Third Reduction (VTR) rule or (2) the Presumed Maximum Value (PMV) rule.[13]

The VTR Rule

The VTR rule applies when an applicant or recipient[14] lives throughout a month in another person's household and receives both food and shelter from others living in that household.[15]

Example: Joe lives in his cousin's house and consumes the food in his cousin's house. He does not contribute toward the food or rent. We would assess the ISM Joe receives under the VTR rule because he lives in another person's household and receives food and shelter from someone in that household.[16]

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[1] See 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 CFR part 416.

[2] 20 CFR 416.1201.

[3] 20 CFR 416.1102. See also 20 CFR 416.1103 for examples of items that are not considered income.

[4] See 20 CFR 416.405 through 416.415. Some States supplement the FBR amount.

[5] 87 FR 64296, 64298 (2022). A table of the monthly maximum Federal SSI payment amounts for an eligible individual, and for an eligible individual with an eligible spouse, is available at *https://www.ssa.gov/oact/cola/SSIamts.html.* When the FBR is adjusted for the cost of living, the amount of the potential ISM reduction adjusts accordingly.

[6] Current market value (CMV) means the price of an item on the open market in your locality (20 CFR 416.1101). We generally determine that the CMV of food or shelter is equal to the amount a vendor would charge for it.

[7] We use the term ''food'' as commonly defined (*e.g.,* it includes items like groceries and meals purchased from a restaurant).

[8] Cash provided to purchase food is not considered as ISM. It is considered cash.

[9] The SSI program included the one-third reduction provision in the statute to prevent us from having to determine the actual value of room and board when a recipient lives with a friend or relative. For more information, see Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. *Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance.* Social Security Bulletin, vol. 68, no. 4, 2008, *www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.*

[10] As a general principle, if SSI recipients do not contribute their pro-rata share of household operating expenses, but they do contribute an amount within $20 of their pro rata share of household operating expenses, we treat the situation as if the recipients pay their pro-rata share under our tolerance policy, and do not reduce benefits because of ISM.

[11] See 20 CFR 416.1148.

[12] See 20 CFR 416.1142 through 416.1148.

[13] See 20 CFR 416.1130, 416.1131, and 416.1140.

[14] We refer to ''applicant or recipient'' here and throughout the NPRM when we mean ''applicant, recipient, or couple'' for ease of reference, except where reference to the couple is specifically relevant.

[15] See 20 CFR 416.1132 for how we define living in another person's household. To clarify, we note that under current rules, we apply the VTR rule when an applicant or recipient lives in another person's household throughout a month and all the food and shelter expenses are paid in part by others living inside the household and part from outside. See also Program Operations Manual System (POMS) SI 00835.200.

[16] SSI applicants and recipients are responsible for reporting changes to their living arrangements as they occur to ensure an accurate calculation of

Under the VTR rule, we reduce by one-third the applicable FBR.[17] Because the FBR for 2023 is $914 for an individual and $1,371 for an eligible individual with an eligible spouse, when we apply the VTR rule in 2023, we reduce SSI benefits by $304.66 ($914 × ⅓) for individuals and $457 ($1,371 × ⅓) for an eligible individual with an eligible spouse.[18] This means the maximum this individual could receive in SSI benefits for that month is $609.34. This amount is calculated and applied before we look at certain other factors, such as earned income, which could further reduce the benefit amount.

The PMV Rule

The PMV rule applies when an applicant or recipient receives ISM, but the VTR rule does not apply. This means we apply the PMV rule when an applicant or recipient receives ISM but does not receive both food and shelter from the household in which the applicant or recipient lives.[19] In other words, the PMV rule would apply when applicants or recipients live in their own household, but someone helps them with food, shelter, or both; they live in someone else's household, but only receive food or shelter (not both) from the household in which they live; [20] or they live in a non-medical institution as described in 20 CFR 416.1141(c).

Example: Lola lives with her minor daughter in an apartment. Lola's mother brings them groceries every week and pays two-thirds of Lola's rent. Although Lola receives assistance with both food and shelter, we assess the ISM Lola receives under the PMV rule, because she lives in her own household.

Example: Michael lives with his sister in his sister's apartment. He does not pay rent but pays for his own food.[21] He has special dietary restrictions and does not consume any of the household's food. Though he lives in another person's household, we would assess the ISM Michael receives under the PMV rule, because he does not receive both food and shelter from that household (he only receives shelter).

Example: John, an eligible individual, leaves his permanent residence and enters a jail on March 15. He is released on May 6 to his home where he has rental liability and pays for all of his food and shelter. No ISM is charged in March for the period spent in jail because, as of the first of the month, he was in his permanent residence and he was not incarcerated throughout the month. In April, John is considered ineligible for a benefit payment due to incarceration for a full month. However, upon release, his benefits are reinstated, and John is charged ISM under the PMV rule for the food and shelter received while in jail from May 1 through May 6. He is not charged ISM under the VTR rule because he did not receive food and shelter throughout a month.

Under the PMV rule, any food or shelter received is presumed to be worth a set maximum value, unless the applicant or recipient rebuts this presumption. The set maximum value is one-third of the FBR, plus the amount of the general income exclusion, which is currently $20.[22] Therefore, when we use the set maximum value under the PMV rule, we reduce SSI benefits by $324.66 (one-third of the current FBR of $914 ($304.66), plus the general income exclusion of $20) for individuals and $477 (one-third of the current FBR of $1,371 ($457), plus the general income exclusion of $20) for couples. Applicants or recipients can rebut the presumption that the food or shelter is worth the set maximum value. If applicants or recipients successfully rebut that presumption, we reduce their benefits by a smaller amount or not at all.[23] Note that the $20 general income exclusion does not apply when we use the VTR rule.[24]

To rebut the presumption that the food or shelter provided is worth the maximum value, the applicant or recipient, or the applicant's or recipient's representative payee, must provide evidence showing that either: (1) the current market value of any food or shelter received, minus any payment that someone makes for them, is less than the PMV; or (2) the actual amount someone else pays for the applicant's or recipient's food or shelter is less than the PMV. The applicant, recipient or representative payee has 30 days to submit evidence of a lower amount (*e.g.,* a payment receipt, a bill with a lower amount, a bank payment). If the evidence is not provided, we calculate the applicant's or recipient's ISM using the set maximum value.

When applying the PMV rule, we consider whether ISM is provided by someone inside the household, outside the household, or both; the number of people in the household; and whether the applicant or recipient is unmarried or part of an eligible couple.[25] ISM calculations under the PMV rule account for these factors to determine an applicant's or recipient's pro rata share of the total household operating expenses.[26] Once we have determined the pro rata share of the household operating expenses, we then consider the applicant's or recipient's contribution toward those expenses. The difference between the applicant's or recipient's share of the expenses and the applicant's or recipient's contribution toward those expenses is the amount by which we reduce the

their monthly benefit amount. Recipients are informed of these reporting responsibilities during their initial claim, pre-effectuation, and redetermination. This means applicants and recipients are responsible for reporting many factors related to their benefits, including changes to food expenses, which may fluctuate from month to month. See 20 CFR 416.701 through 416.714 for reporting responsibilities.

[17] The one-third reduction is established by statute. See section 1612(a)(2)(A) of Social Security Act (Act) (42 U.S.C. 1382a(a)(2)(A)). Accordingly, we are not proposing changes to the calculation of benefits under the VTR rule.

[18] See 20 CFR 416.1147 through 416.1149 for special circumstances.

[19] Currently, when deciding whether to apply the PMV or VTR rule, we consider that an applicant or recipient is not subject to the VTR rule when the applicant or recipient (or at least one member of an eligible couple) designates part or all of his or her contribution toward household operating expenses for food or shelter and the contribution equals or exceeds the pro rata share of household operating expenses for food or shelter. This is because the applicant or recipient is not receiving both food and shelter from the household in which he or she resides. In other words, we evaluate ISM under the PMV rule when applicants or recipients contribute their share of food or shelter to their household operating expenses. See 20 CFR 416.1130 through 416.1141.

[20] Unlike the VTR rule, which as previously explained derives the one-third reduction explicitly from section 1612(a)(2)(A) of the Act, we established the PMV rule through our rulemaking authority. The PMV rule enables us to efficiently reduce benefits when ISM is involved instead of having to attempt to value the ISM, but also allows individuals to rebut and use a real valuation of the ISM if they believe it would be beneficial for their claim.

[21] If applicable, under our current policies, we ask applicants or recipients if their contributions are allocated for food or shelter. When we ask if they are earmarking their contribution to either food or shelter and they say, ''no,'' we look at the contribution to determine if they meet their pro rata share of all expenses listed on the Household Expenses and Contributions page within the SSI Claims System.

[22] See § 416.1124(c)(12).

[23] 20 CFR 416.1140(2)(ii).

[24] See § 416.1124(c)(12).

[25] For example, if the applicant or recipient is part of an eligible couple, we follow the same steps as we would to compute an individual's ISM amount using the PMV rule except we double the pro rata share of expenses (to account for two people), and we subtract the couple's combined contribution (instead of the individual's contribution) toward the household operating expenses.

[26] Household operating expenses are the household's total monthly expenditures for food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. (20 CFR 416.1133). Under the proposed policy, food would be omitted from this calculation. Note that this term is distinct from certain uses of ''household expenses'' in other aspects of the SSI program, such as the monthly household expenses information collected on the SSA–632 (Request for Waiver of Overpayment Recovery).

applicant's or recipient's benefits for ISM (up to the applicable limit).

Example: Larry lives with his brother and sister-in-law in their household. If he receives both food and shelter from his brother and sister-in-law, we would assess his ISM under the VTR rule, reducing his benefits by $304.66 each month. However, in this example, he provides evidence that he pays for his share of shelter expenses, so we assess his ISM under the PMV rule (because he is not receiving both food and shelter from the household in which he lives). He tells us that he consumes the household's food, but that he does not contribute toward the food expenses. Upon prompting from our technician about whether he wished to rebut the presumption of the maximum value, Larry rebuts the presumption that the food or shelter provided is worth the maximum value and demonstrates that the household's food expenses are $500 monthly.[27] We consider Larry's share of the food expenses to be $166.66 (the total household food expenses divided among three people), and we reduce Larry's benefits by this amount. For comparison, the set maximum value under the PMV rule would have reduced his benefits by $324.66, and the VTR rule would have reduced his benefits by $304.66.

As an example, we have provided the steps we use to calculate the value of ISM for an unmarried applicant or recipient, who has rental liability, when the ISM is provided by someone within the same household:

Step 1: Divide the total household operating expenses (including food expenses) by the number of household members. The result is the applicant's or recipient's pro rata share.

Step 2: Subtract the applicant's or recipient's contribution to the household operating expenses (including food expenses) from the applicant's or recipient's pro rata share. The result is the actual value of ISM. (The actual value cannot be less than $0.)

Step 3: Compare the actual value of the ISM to the set maximum value under the PMV rule (currently $324.66). Select the lesser of the two values. Reduce the FBR by this amount.[28]

When deciding whether to apply the PMV or VTR rule, we also follow the general principle that an applicant or recipient is not subject to the VTR rule when he or she (or at least one member of an eligible couple) designates part or all of his or her contribution toward household operating expenses for food or shelter, and the contribution equals or exceeds the pro rata share of household operating expenses for food or shelter. This is because such applicants or recipients are not receiving both food and shelter from the household in which they reside. In other words, we evaluate ISM under the PMV rule when applicants or recipients contribute their pro rata share of food or shelter to their household operating expenses.[29]

In January 2022, there were approximately 7,341,000 individuals receiving SSI. Based on our internal data, we estimate that we reduced the payments of 793,000 SSI recipients because of ISM in the same month. Of these 793,000, we estimate that we reduced payments for 358,000 SSI recipients under the VTR rule and that we reduced payments for 434,000 recipients under the PMV rule.[30] Of those assessed under the PMV rule, we estimate that 207,000 (48%) successfully rebutted the presumed maximum value (*i.e.,* their payments were reduced less than the PMV rule's set maximum value). In addition, we estimate that the mean ISM amount among all recipients evaluated under the PMV was $207 and the mean ISM amount among recipients who successfully rebutted the PMV was $112. Table 1 summarizes the status of ISM-impacted recipients in January 2022: [31]

	VTR	PMV—maximum amount applies	PMV—lower than the maximum amount
Affected Recipients (count)	358,000	227,000	207,000
Affected Recipients (as percentage of all ISM recipients)	45%	29%	26%
Mean ISM Amount	$280.33	[32] $300.33	$112

[27] When explaining PMV and the process of rebutting to an applicant or recipient, we do not provide a specific script to our technicians (see SI 00835.320 B.2 for the guidance we provide technicians.) In summary, technicians explain to applicants or recipients: (1) that they are receiving ISM, (2) what form of ISM we are charging and the value, and (3) that they have the right to rebut the PMV. While we do not require technicians to use the term ''rebut,'' it has been used historically in our written communications with the applicant or recipient, including the ''Rebuttal Rights Notification'' letter that is sent after the conversation.

Procedurally, when applicants or recipients choose to rebut the PMV, the technician explains to them that they have 30 days to provide evidence showing that the actual value is less than the PMV. In some cases, an applicant or recipient may have evidence in-hand to present to us, the technician is able to verify the household expenses, and the rebuttal is easily processed. Otherwise, the applicant or recipient is responsible for providing us the necessary evidence within 30 days. However, if the individual indicates a need for assistance, the technician is responsible for assisting to obtain the necessary evidence, per policy.

We have found that most applicants and recipients who state they wish to rebut the PMV follow up within 30 days with the necessary documentation. Some applicants and recipients state they want to rebut, but don't provide the documentation within 30 days, and so the PMV generally is applied.

We do not have any indication that applicants and recipients for whom the PMV applies have any confusion surrounding the term ''rebuttal'' or face procedural challenges or undue burdens with understanding or providing the necessary evidence to successfully rebut the PMV. We have also not historically received any feedback regarding concerns with how this information is presented in the ''Rebuttal Rights Notification'' letter that is typically sent as follow-up after the conversation between the technician and the applicant or recipient. However, as noted in the section of this NPRM entitled ''Solicitation for Public Comment,'' we are specifically seeking comment regarding the experience of understanding and rebutting the PMV, including any feedback related to the clarity of the concept of ''rebuttal,'' suggestions for improving the ''Rebuttal Rights Notification'' letter (which we have documented), and other potential regulatory or programmatic improvements to simplify the rebuttal process. We note that while we may not be able to implement suggestions as an element of the final rule, feedback may still help inform future decisions regarding the rebuttal process.

[28] If there are other sources of ISM, there are additional calculations. For more examples of ISM computations, please see the section titled, ''HOW DOES MY LIVING ARRANGEMENT AFFECT MY SSI BENEFIT AMOUNT?'' available at *https://www.ssa.gov/ssi/text-living-ussi.htm.*

[29] See POMS SI 00835.170.

[30] See Table 1 of our supplemental document titled, ''Tables of Administrative Data Related to In-Kind Support and Maintenance (ISM),'' available at *www.regulations.gov* as a supporting document for Docket SSA–2021–0014.

[31] The FBR for 2022 was $841 for an individual and $1,261 for an eligible individual with an eligible spouse. *See* 86 FR 58715, 58717 (2021). When we applied the VTR rule in 2022, we reduced SSI benefits by $280.33 ($841 × ⅓) for individuals and $420.33 ($1,261 × ⅓) for an eligible individual with an eligible spouse.

Proposed Change

We propose to update our regulations to exclude food from the calculation of ISM. We also propose to add conforming language to our definition of income explaining that food would be an ISM exception.

Accordingly, we would no longer consider food expenses in our ISM calculations. Instead, we would consider only shelter expenses (*i.e.,* rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services). We would continue to use the VTR or PMV rule to determine the value of the ISM provided. We would apply the VTR rule when applicants or recipients live in another person's household throughout a month and their shelter expenses (rent or mortgage, and utilities) are paid by others living inside the household,[33] and when household operating expenses are paid by a combination of others living inside the household and others living outside the household. Alternatively, we would apply the PMV rule when applicants or recipients live in their own households, and someone outside the home pays for their shelter costs.[34]

Our proposal to remove food from ISM calculations could eliminate the benefit reduction that we currently apply to some recipients. This would occur in some cases in which an applicant or recipient allocated a higher proportion of their contribution toward shelter expenses. It could also occur in some cases if an applicant or recipient contributed to their household operating expenses generally. Further, in some circumstances, recipients may choose to reallocate their funds to adjust the amount they contribute toward shelter expenses.

Example: Stan lives in an apartment with a friend, and Stan has rental liability, which means Stan is liable to a landlord for rent. Currently, his household operating expenses are $1,400 monthly ($1,000 rent and utilities, and $400 food). Stan's pro rata share of the household operating expenses is $700. Stan contributes $500, specifically for rent. He does not contribute to the household's food expenses, though he consumes the household's food. In this example, during an interview with our technician, the technician informed Stan that they would apply the maximum value under the PMV rule and asked Stan if he intended to rebut the maximum value. Stan rebutted the amount of shelter ISM that he receives, indicating it is less than the maximum value. Under the current rule, we would apply the PMV rule and reduce Stan's monthly SSI benefits by $200 (the difference between his pro rata share and his contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses to $1,000. This would reduce Stan's pro rata share to $500. If he still contributed $500 monthly to his household operating expenses, he would meet his pro rata share and we would no longer reduce his benefits because of ISM.

Example: Jane lives in an apartment with her sister, and Jane has rental liability. Currently, their household operating expenses are $1,200 monthly ($900 rent and utilities, and $300 food). Jane's pro rata share of the household operating expenses is $600. Jane contributes $500. Currently, we would apply the PMV rule and reduce Jane's monthly SSI benefit by $100 (the difference between her pro rata share and her actual contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses to $900. This would reduce Jane's pro rata share to $450. If she still contributed $500 monthly to her household operating expenses, we would no longer reduce her benefits because of ISM.

We expect that some other applicants or recipients—those who do not contribute their full pro rata share even after food expenses would be omitted—may experience a smaller benefit reduction under the proposed policy. This could occur if a higher proportion of an applicant's or recipient's contribution is allotted toward shelter expenses, or if applicants or recipients contribute to their household operating expenses generally and they continue to contribute the same amount toward their household operating expenses even after, as proposed, food is no longer included in household operating expenses. When applicants or recipients pay a larger share of their expenses, they receive less ISM, meaning their benefits may be reduced less.

Example: Mark owns his home, and his parents live with him. Currently, the household operating expenses are $2,050 monthly ($1,600 for mortgage and utilities and $450 for food). Mark's pro rata share of the household operating expenses would be $683.33. Mark contributes $500. Currently, we would apply the PMV rule and reduce Mark's SSI benefit by $183.33 (the difference between his pro rata share and his actual contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses down to $1,600. This would reduce Mark's pro rata share to $533.33. If he still contributed $500 monthly to his household operating expenses, we would reduce his benefits by $33.33 for ISM.

Though we propose to eliminate food expenses from our ISM calculations, we would still consider food expenses for a narrow purpose: to determine whether to use the VTR rule or the PMV rule in certain circumstances. Food expenses would not be included in the actual calculation. We would continue to ask applicants and recipients certain questions about food. These questions are: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive Supplemental Nutrition Assistance Program (SNAP) benefits? If applicants or recipients answer ''yes'' to any of these questions, even if the applicant or recipient lives in another person's household, we would evaluate their ISM using the PMV rule to calculate ISM, and we propose to add this to our regulations.

SUMMARY OF VTR RULE AND PMV RULE UNDER CURRENT AND PROPOSED REGULATIONS

ISM rule	Current regulation	Proposed regulation
VTR Rule	*When the Rule Applies* We apply when applicants and recipients: • live throughout a month in another person's household; and.	*When the Rule Would Apply* We would apply when applicants and recipients: • live throughout a month in another person's household; and

[32] After the $20 general income exclusion is applied, if there is no other income, the benefit reduction in 2022 was $280.33.

[33] *Example:* If an applicant or recipient lives with a friend and does not pay for his share of the rent or mortgage and utilities, we would apply the VTR rule.

[34] *Example:* If an applicant or recipient lives by herself, but her sister pays her utility bills, we would use the PMV rule to evaluate the help provided by the applicant's or recipient's sister.

SUMMARY OF VTR RULE AND PMV RULE UNDER CURRENT AND PROPOSED REGULATIONS—Continued

ISM rule	Current regulation	Proposed regulation
	• receive both food and shelter from others living in the same household. *Amount We Reduce Benefits* We reduce by one-third of the applicable FBR.	• receive shelter from others living in the same household. *Amount We Would Reduce Benefits* We would reduce by one-third of the applicable FBR (no change).
PMV Rule	*When the Rule Applies* We apply when the applicant or recipient receives food or shelter but does not meet the conditions of the VTR rule. *Amount We Reduce Benefits* If applicants or recipients successfully rebut the presumption that the food or shelter provided to them is worth a set maximum value, we determine the actual value of the ISM by subtracting the applicants' or recipients' contribution from their pro rata share of the total household operating expenses (including food expenses). We reduce the applicable FBR by the actual value.	*When the Rule Would Apply* We would apply when the applicant or recipient receives shelter but does not meet the conditions of the VTR rule (no change). *Amount We Would Reduce Benefits* If applicants or recipients successfully rebut the presumption that the shelter provided to them is worth a set maximum value, we would determine the actual value of the ISM by subtracting the applicants' or recipients' contribution from their pro rata share of the total household operating expenses (omitting food expenses). We would reduce the applicable FBR by the actual value.

In addition, we propose to update § 416.1131 with clarifying language. Currently, our regulations state that for the VTR rule to apply, an applicant or recipient must receive both food and shelter from the person in whose household they are living. In practice, when determining whether to apply the VTR rule, we consider others in the household as well. We calculate the total household operating expenses and divide by the number of household members to calculate the pro rata share. If the applicant or recipient is paying his or her pro rata share, he or she would be eligible for a full benefit amount, before we take into consideration other factors (*e.g.,* earned or unearned income) unrelated to the ISM policy that might impact the actual benefit amount for which they are eligible. We would clarify this longstanding practice in our regulations.

Finally, we note that this proposal would not change our current rules that cover wages paid in kind (20 CFR 416.1110(a)(3)). Under section 1612(a)(1)(A) of the Act, we are required to consider food that an individual receives from an employer as wages. 20 CFR 416.1110(a)(3) will remain unchanged to stay consistent with the Act.

Codifying Counting Income Constructively

Independent from removing food from the ISM calculation, we also propose to clarify that income may be received ''constructively.'' Income is received constructively, unless there are significant restrictions on the applicant's or recipient's ability to receive it, if it is under an applicant's or recipient's control or an applicant or recipient can use it despite not actually receiving it. Constructive receipt of income is part of our current policy and this change would make it clearer.

Justification for Change

The basic purpose of SSI is to assure a minimum level of income to people who are aged, blind, or disabled and who have limited income and resources. As discussed above, we evaluate many types of income when determining whether someone is eligible under the program. We have historically included in-kind receipt of food in our consideration because food assistance helps people meet their basic needs. However, the complexities of our current food ISM policies may outweigh their utility. The Social Security Advisory Board stated in 2015 that ''the complexity of ISM rules contributes to the number of hours that SSA must spend to prevent under and overpayments—and diverts resources from other program integrity activities . . . .'' The Board also noted that ''collecting and verifying information to determine whether there is in-kind support at the application stage is time-consuming and having to continue to make that assessment is burdensome, both for the agency and the SSI recipient who must maintain constant communication with the agency.'' [35] Moreover, the current ISM policy may insert barriers into what would otherwise be an innocuous receipt of a meal or food from an individual's friends or family. The current requirements for reporting in-kind food receipts could discourage SSI applicants and recipients from receiving an often informal but important form of help.

Accordingly, we propose to make the changes outlined for two reasons: to simplify our policy (which will allow for improved application, adjudication, compliance, and comprehension of our rules) and to promote equity by not disadvantaging an already vulnerable population when they receive food assistance. We expect that the proposed rules would provide increased financial security to impacted beneficiaries; provide consistent treatment of food support regardless of source; reduce unduly burdensome reporting requirements; and facilitate improved food security among certain beneficiaries.

Proposal Would Simplify the Policy

The proposed change would simplify SSI policy in several ways. Removing a variable from our ISM calculations would: (1) reduce the amount of program rules an applicant or recipient needs to understand; (2) reduce the amount of information that applicants or recipients must report, both during the application process and in post-award reporting; [36] (3) simplify and shorten processing; and (4) lead to fewer benefit recalculations (and therefore, for

[35] See the Social Security Advisory Board Statement on the Supplemental Security Income Program, ''The Complexity of In-Kind Support and Maintenance.'' 2015, pgs, 4 and 6, *https://www.ssab.gov/wp-content/uploads/2021/03/2015_-SSI_In-Kind_SupportMaintenance.pdf#:~:text=The%20Complexity%20of%20In-Kind%20Support%20and%20Maintenance%20Public,annual%20report%20to%20the%20President%20and%20the%20Congress.*

[36] Although we refer to the applicant or recipient for ease of reference, if the applicant or recipient has a representative payee, the representative payee would be responsible for reporting the information discussed in this section.

example, possibly fewer ISM-related overpayments).

The proposed rule follows a change we made to our program in 2005, when we published a final rule removing clothing from the definition of ISM,[37] which simplified our policies and improved our work efficiency. Like the 2005 simplification, this proposal would simplify the ISM calculation with respect to a factor for which it is difficult to obtain accurate, verifiable estimates. Like clothing, food is an expense that fluctuates from month to month and may be provided from different sources at different intervals. We anticipate these simplifications will help make our program more equitable for applicants and recipients. We discuss the ways in which this policy is more equitable in the section titled, ''Proposal Would Promote Equity.''

1. Reduce the Amount of Program Rules an Applicant or Recipient Needs To Understand

The ISM policy has been cited as one of the most complicated aspects of the SSI program, and applicants and recipients and their representatives have expressed difficulty in understanding and complying with our current ISM rules. As explained by Nicholas (2014), ''a substantial portion of the ISM literature criticizes ISM policies for being inequitable, complex, intrusive, and burdensome.'' [38] Complicated rules can lead to otherwise-eligible individuals' forgoing applying for benefits or taking on unnecessary burden while navigating application and award processes. We expect that reducing the number of variables may help applicants and recipients and their representatives understand the calculations more easily, which may reduce burden associated with both applying for benefits and maintaining eligibility.

2. Reduce the Amount of Information That Applicants or Recipients Must Report

Under our current regulations, we require applicants or recipients to provide detailed information about their household composition, their household operating expenses, and their contributions toward household operating expenses. We collect this information when applicants apply for benefits and when any of this information changes. The proposed changes would lessen the reporting burden on applicants or recipients by reducing the amount of information applicants or recipients must report. They would no longer need to inform us of their households' food expenses, their contributions to their households' food expenses, or changes to either, except under very limited circumstances. Under the proposal, these circumstances would be limited to changes that could affect whether their ISM is evaluated under the VTR or PMV rule. In other words, applicants or recipients would still inform us if they live in another person's household and if they answer ''yes'' to any of the following questions: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive SNAP benefits?

First, individuals applying for SSI may receive in-kind food support specifically because they lack any reliable source of income and are reliant on non-cash support from friends and family. By reporting this in-kind support on their application, they may receive a reduced benefit due to the ISM policy. However, the receipt of SSI may grant recipients the financial means to start obtaining their own food, and the change in how they obtain their food would need to be reported. The quick succession of having to provide newly updated income information to us imposes reporting and adjudication costs on the recipient and the agency, respectively. Moreover, if the recipient fails to report the reduction in in-kind food support, they may fail to receive the full benefit for which they were eligible. By no longer collecting this information during the application, we also reduce the need for newly awarded beneficiaries to have to provide an updated report.[39]

Second, current requirements to report detailed information about household composition, household operating expenses, and contributions toward household operating expenses may present challenges for applicants or recipients. It may be difficult for applicants or recipients to provide accurate estimates of their food expenses and contributions. Actual food purchases may involve varying intervals and multiple household members, vendors, and forms of payment. Further, the applicant's or recipient's estimates are tied to the price of food, which is variable. In fact, one popular measure of inflation excludes the food sector because it is a price category considered excessively volatile.[40] Changing food prices means that applicants' or recipients' reported food expenses may not accurately reflect their future food expenses. When recipients report food expenses that do not reflect their actual food expenses, they must immediately report the discrepancy to ensure we calculate their benefit amount correctly. Otherwise, they risk an overpayment or underpayment.[41]

Removing food from our ISM calculations would also eliminate challenges applicants and recipients experience to verify food expenses and their contributions toward those expenses. To verify food expenses, typically another household member must attest to the estimates provided.[42] In most cases, there is no other method of expense verification. In contrast, for shelter costs, we can usually obtain verification through an applicant's or recipient's rental or mortgage agreement, tax records, and utility bills. Complying with these requirements can impose burdens on applicants and recipients.

3. Simplify and Shorten Processing

As Balkus et al., noted in a 2008 analysis, we must make a determination concerning ISM receipt for most SSI recipients, but only about 9 percent of SSI recipients have their benefits reduced due to ISM. Further, they noted that ''a determination may involve a detailed accounting of household expenses and the individual's

[37] 70 FR 6340 (2005).

[38] See Nicholas, Joyce. ''Source, Form, and Amount of In-kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients.'' Social Security Bulletin, vol. 74, no. 3, 2014, *https://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p39.html.*

[39] In 2007, we began redeveloping VTR cases three months after the first payment. During this redevelopment period, the technician determines if recipients should be assessed under the PMV rule based on household contribution or based on a relocation into their household. The data showed that the number of people who transitioned from VTR to PMV within a two-month period was low. For example, of those in pay status in December 2020, only 465 made a transition from VTR to PMV in January or February of 2021. For comparison, we also looked at those in pay in December 2021. Of those in pay status in December 2021, only 285 made the transition in January or February of 2022. We do not anticipate that this proposed rule, if finalized, would change our policy of contacting a recipient, who is receiving ISM under the VTR rule, and redeveloping the claimant's case three months after the first payment.

[40] See ''The trouble with food and energy.'' The FRED Blog, 29 Feb. 2016, *fredblog.stlouisfed.org/2016/02/the-trouble-with-food-and-energy/.*

[41] Applicants and recipients are responsible for reporting many factors related to their benefits. While reporting food is just one of many, our proposal would simplify reporting by removing one of the frequently fluctuating variables applicants and recipients must report.

[42] When SSI applicants or recipients provide information about household expenses, our technicians contact the homeowner or another household member who is knowledgeable of the household expenses for verification. The contact information for the other knowledgeable household member is provided to us by the applicant or recipient and is also located on the Household Expenses and Contributions page within the SSI Claims System.

contribution, to establish whether the individual pays his or her pro rata share of expenses. In addition to initial claims, this determination must be repeated if there is any change in household composition or expenses that might affect the amount of the SSI benefit.'' [43]

The program complexities associated with administering the ISM policy also fall on our personnel who are responsible for reviewing and adjudicating claims, as well as other front-line personnel responsible for communicating the policy to applicants and recipients. By eliminating food from the ISM calculation and thus simplifying the ISM policy, our personnel would save time associated with training on the current ISM policy and with adjudicating and reviewing claims and post-award reporting changes in in-kind food support when compared to the current ISM policy.

4. Lead to Fewer Benefit Recalculations and Fewer Improper Payments

When an SSI recipient reports changes related to his or her food expenses or contributions, we must recalculate the recipient's benefit amount based on the updated information.[44] If we eliminate food from our ISM calculations, recipients will no longer need to report these changes, nor would they be subject to recalculations for these changes. This will save beneficiaries time and reduce the required reporting frequency.

As an example, this could lead to fewer situations in which we determine a beneficiary has been overpaid due to unreported ISM. Similarly, if an overpayment still occurred, it could be lower since we would no longer consider food as part of the ISM calculation. We have noted that the ISM reporting requirement is challenging for beneficiaries to comply with. As Nicholas summarized, ''GAO and SSA's Office of the Inspector General have repeatedly declared ISM policy as one of the leading causes of SSI improper payments.'' [45] For example, in Fiscal Year (FY) 2018, ISM overpayments totaled $356 million.[46] Removing food from the ISM calculation may help reduce overpayments, which can be time- and resource-consuming for both recipients and the agency. We expect simplifying the ISM policy will enhance compliance with SSI rules.

Proposal Would Promote Equity

SSI recipients have low income and resources. Because low-income people disproportionately encounter barriers across a range of social, health, and economic outcomes, our goal is to improve their circumstances, thus improving equity, by removing benefit reductions for this population. As discussed below, we anticipate the policy may facilitate increased food security, which could lead to an overall greater sense of well-being and better health outcomes. As well, the new process would remove a disincentive for family and friends to provide food support, and be generally easier, less burdensome, and potentially less anxiety-provoking. Specifically, this proposed rule would promote equity by: (1) providing increased financial security to affected beneficiaries; (2) providing consistent treatment of food support regardless of source; (3) reducing reporting requirements and the effects of reporting on applicants and recipients; and (4) facilitating improved food security among certain beneficiaries. Removing these obstacles would ultimately promote equity by lessening the disparity between SSI applicants or recipients and others.

1. Providing Increased Financial Security to Affected Beneficiaries

By design, the SSI program serves people who may be facing barriers in various aspects of their lives: individuals with low incomes, including older individuals, families with children, individuals with disabilities, and people who may have been historically underserved. This proposal would benefit disabled, blind, and aged persons who are struggling to meet basic food and shelter expenses, as the 2022 Federal maximum SSI benefit amount ($10,092/year) is lower than the current Federal poverty level, which is set at $13,590 for an individual. It removes barriers to food security for persons affected by persistent poverty. Individuals receiving SSI are disproportionately likely to encounter social, economic, and health inequities that are in part compounded by their, on-average, below-poverty level income.[47] Removing food from the ISM calculation generally would increase the income support to recipients who may have reduced benefits due to the current ISM policy, which in turn generally would provide them additional financial security.

This proposal would also remove a possible disincentive for family and friends to help applicants or recipients obtain food. In a United States Department of Agriculture (USDA) study of households that receive SNAP benefits,[48] researchers found that, among food coping strategies cited by study participants, a significant minority of the food-secure SNAP households turn to family networks for assistance.[49] Our proposed rule would ensure that, when applicants or recipients rely on networks of family or friends to help obtain the food they need, we will not reduce their benefits as a result. Under the current PMV rule, when we consider food provided to applicants or recipients, it is offset by dollar-for-dollar reductions in the

[43] ISM rules have long been identified as a source of administrative complexity. For more information about administrative complexity related to ISM, see Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. ''Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance.'' Social Security Bulletin, vol. 68, no. 4, 2008, *www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.*

[44] Under the proposed rules, applicants or recipients would need to contact us if their response to a food question changes because this could affect whether their ISM is evaluated under the VTR or PMV rule. In other words, applicants or recipients would still contact us if they live in another person's household and their answer to any of the following questions changes: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive SNAP benefits? See 20 CFR 416.701 through 416.714 for reporting responsibilities.

[45] See Nicholas, Joyce. ''Source, Form, and Amount of In-kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients.'' Social Security Bulletin, vol. 74, no. 3, 2014, *https://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p39.html.*

[46] See pages 188 and 195–196 of our FY 2019 Agency Financial Report available at *https://best.ssa.gov/finance/2019/Payment%20Integrity.pdf.* ISM is also a leading cause of underpayments. For example, ISM underpayments totaled $246 million in 2018.

[47] Penalizing in-kind assistance from private sources may reduce social equity by discouraging social relationships for vulnerable individuals. For the importance of social relationships to people with disabilities, see Tough, Hannah; Siegrist, Johannes; and Fekete; Christine. 2017. ''Social relationships, mental health and wellbeing in physical disability: a systematic review.'' BMC Public Health 17 (414).

[48] SNAP is a Federal program that provides nutrition benefits to low-income individuals and families that are used at stores to purchase food. Most SSI recipients receive benefits from SNAP (For example, 62.8 percent of SSI recipients received SNAP in 2013). See Bailey, Michelle and Hemmeter, Jeffrey. ''Characteristics of Noninstitutionalized DI an SSI Program Participants, 2013 Update.'' Research and Statistics Note No. 2015–02. Released September 2015. *https://www.ssa.gov/policy/docs/rsnotes/rsn2015-02.html.* The average monthly SNAP benefit was about $155 per person in 2020. See Supplemental Nutrition Assistance Program, Aug. 6, 2021, available at *https://fns-prod.azureedge.net/sites/default/files/resource-files/34SNAPmonthly-8.pdf https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-11.pdf.*

[49] See U.S. Department of Agriculture. SNAP Food Security In-Depth Interview Study (2013) at *https://fns-prod.azureedge.net/sites/default/files/SNAPFoodSec.pdf.* p xiii. While this study focused on SNAP participants, not specifically SSI recipients receiving SNAP, there is some overlap. Some households in the study received SSI. See pg. 7.

applicants' or recipients' benefits, up to the set presumed maximum value (currently $324.66). Because of this offset, in most cases, the help from family or friends does not improve the recipient's ability to meet his or her food needs because this would cause a reduction to the recipient's SSI benefit amount. This creates undesirable effects. For one, because food support generally does not prompt ISM if it comes from charitable or government sources, the current ISM policy could be seen to favor government or charitable sources of food support over support from friends and families. Second, the one-for-one offset means that for SSI applicants and recipients who would otherwise receive food support below the PMV threshold, there may be no incentive to receive said support.

By removing food from ISM calculations, we would remove a consideration that recipients could view as discouraging establishing and maintaining these vital forms of familial, social, and community support that can be a critical, if informal, support structure. Encouraging these support networks for beneficiaries currently receiving SSI may also facilitate additional resiliency for individuals even if they stopped receiving benefits in the future.

Example: Sheila lives alone and normally purchases her own food, but she is having trouble meeting her monthly food expenses. Her daughter wants to help her with her food expenses and buys Sheila $100 of groceries each month. Under current regulations, Sheila would contact us to report the ISM her daughter is providing ($100 of groceries each month). We would then reduce Sheila's monthly SSI benefit by $100. Ultimately, Sheila would receive the same amount of assistance each month because without her daughter's help, Sheila's benefits would not be reduced by $100. She would receive no net benefit from receiving $100 in groceries (and would have to spend time reporting the receipt of groceries).

2. Providing Consistent Treatment of Food Support Regardless of Source

This proposed rule would also allow us to treat food assistance uniformly, regardless of the source. Under current rules, as explained above, we apply our ISM rules to determine if we need to reduce recipients' benefits because of the food assistance they receive from private sources, like family and friends. However, we do not reduce a recipient's benefits for the food assistance they receive from public sources, such as SNAP. In other words, public sources of food assistance are not counted as ISM under current rules. Therefore, excluding food from the calculation of ISM would ensure that food assistance from public and private sources are treated uniformly (*i.e.,* both excluded) under ISM rules. Removing this inconsistency would decrease the complexity of our program.

3. Reducing Reporting Requirements and the Effects of Reporting on Applicants and Recipients

As previously discussed in our justifications focused on the time- and cost-savings associated with simplifying the ISM policy, the challenges associated with understanding and complying with ISM requirements likely compound existing inequities for SSI recipients. Manasi Desphande and Yue Li provide a detailed overview of contemporary research related to how these challenges can disproportionately lead to underutilization of critical services and programs by those most in need.[50] Other behavioral science research has shown that burdens like the complicated food-support ISM reporting requirements can have negative effects for individuals already facing scarcity, as is the case for many SSI recipients.[51]

Relatedly, current ISM policy requires that SSI recipients report simple acts of charity or support from friends or family, and beneficiaries may be improperly paid if they fail to report these events in a timely manner. Because the SSI program may be perceived as complicated and burdensome, there may be a psychological cost such as anxiety or stress related to reporting food. This could lead to individuals' not wanting to apply or failing to comply with the requirements for maintaining their SSI benefits. By treating the sharing and provision of food, a common human generosity, as something that must be reported, it is possible some beneficiaries may experience frustration, anxiety, or discomfit that in turn may reduce SSI participation (or may result in current recipients' failing to report in-kind food support). Questioning individuals about items as personal as a household's food purchases may be seen as overly intrusive without achieving a substantial program goal. This proposal has the potential to make our rules less intrusive and better protect beneficiaries' privacy and dignity while continuing to meet the requirements of the program.

5. Facilitating Improved Food Security Among Certain Beneficiaries

This proposal would remove benefit reductions that applicants or recipients may incur when they receive help obtaining food from family or friends. By removing benefit reductions, we may remove a barrier to food security for individuals with low incomes. Food insecurity is defined as ''limited or uncertain availability of nutritionally adequate and safe foods, or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.'' [52] Food insecurity is often associated with poor health. For example, after certain risk factors were controlled, studies found that ''food-insecure children are at least twice as likely to report being in fair or poor health and at least 1.4 times more likely to have asthma, compared to food-secure children; and food-insecure seniors have limitations in activities of daily living comparable to those of food-secure seniors fourteen years older.'' [53] By implementing the policy, we will potentially increase food security for some SSI recipients, which may alleviate some of the ill-effects of food insecurity.

Research shows that food insecurity rates are often higher than average for people facing certain barriers. The USDA's Economic Research Service published 2019 rates of food insecurity that were more than two and a half times higher for households with incomes below 185 percent of the poverty threshold than for the national household average (27.6 percent vs. 10.5

[50] Deshpande, Manasi, & Li, Yue. (2019). Who is screened out? Application costs and the targeting of disability programs. American Economic Journal: Economic Policy, 11(4), 213–48.

[51] Mullainathan, S. & Shafr, E. (2013.) Scarcity: Why having so little means so much. Henry Holt and Company.

[52] See ''Measurement.'' USDA Economic Research Service, *www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/measurement.aspx#insecurity.*

[53] See Gundersen, Craig; Ziliak, James. ''Food Insecurity and Health Outcomes'' Health Affairs, vol. 34, no. 11, Nov. 2015, *www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.0645.* In addition, ''even short-term food insecurity can have significant impacts on children's health, including poorer behavioral, emotional, and nutritional outcomes. Among children, food insecurity has been linked to increased risk of obesity.'' See Metallinos-Katsaras, Elizabeth; Must, Aviva; Gorman, Kathleen. ''A longitudinal study of food insecurity on obesity in preschool children.'' Journal of the Academy of Nutrition and Dietetics, Dec. 2012, *pubmed.ncbi.nlm.nih.gov/23174682/,* doi: 10.1016/j.jand.2012.08.031. As another example, a study found that in a national sample of older adults, there was ''an inverse association between food insecurity and cognitive function.'' See Frith, Emily; Loprinzi, Paul. ''Food insecurity and cognitive function in older adults: Brief Report.'' Clinical Nutrition, vol 37, no. 5, pp. 1765–1768, *https://doi.org/10.1016/j.clnu.2017.07.001.*

percent).[54] Further, a 2019 article noted findings suggesting that households with a disabled adult are ''disproportionately food insecure,'' and that ''disabilities are associated with food insecurity through multiple pathways.'' [55] We do not know to what extent this rule will result in increased food security alongside other more prominent benefits, such as reduced burden associated with less reporting required by claimants. However, we intend for it to have an impact in this area. SSI applicants and recipients are a population likely to face challenges in food security. By removing food from the ISM calculation, we are removing obstacles to obtaining food that could help ease the burden of rising food costs for some recipients.

Justification for Retaining Food-Related Questions

As explained above, we would still ask certain food-related questions for the narrow purpose of determining whether to use the PMV or VTR rule to assess ISM, and we would make this clear in our regulations. Using food expenses for this narrow purpose is a significant simplification of our current policies for the reasons provided above. Applicants or recipients would need only to answer three questions related to food expenses with a ''yes'' or ''no''; they would not need to provide dollar amounts.[56] Similarly, this consideration would allow us to remain consistent with our current policy of when we evaluate applicants or recipients under the PMV rule. If we did not continue to consider food for this narrow purpose, some applicants or recipients who currently have their ISM evaluated under the PMV rule would be required to have their ISM evaluated under the VTR rule, which might be disadvantageous for them. Based on administrative data of recipients' current living arrangements as of May 19, 2022, we found the following: 12,977 recipients earmark their household operating expenses contributions for both food and shelter; 3,427 earmark for food only; 39,412 recipients report that they ''eat all meals out;'' and 889,651 recipients report that they ''buy food separately.'' [57] This data comes from the SSI Claims System, which includes all recipients receiving SSI as of May 19, 2022. While some of these recipients may no longer face an ISM reduction at all under our proposal because they exclusively receive food support and do not receive any shelter support (see, for example, our previous example with ''Larry''), many of these recipients are in in-kind support situations similar to our example with ''Michael.'' However, unlike in our example with ''Michael,'' which discusses rebutting the PMV under our current rules, if Michael were no longer able to earmark expenses for food, and we did not continue to ask these food questions, the VTR rule would apply. We do not have precise estimates of how much the average increase in ISM reductions would be in such situations.

As discussed in greater detail in the E.O. 12866 section below, in addition to ensuring that our proposal to remove food from the ISM calculation does not inadvertently disadvantage individuals to whom the PMV rule currently applies, retaining these food-related questions would also result in our applying the PMV rule to certain individuals who are currently evaluated under the VTR rule. In our case study, we found that roughly one-third (*i.e.,* 122 of 353) of recipients currently evaluated under VTR would instead be evaluated under PMV. Of those 122 cases, 46 would receive more-favorable treatment under our proposal. We assumed that they would successfully rebut the PMV, and these 46 cases on average would see an increase of $166 in Federal SSI payments in 2023 relative to current rules. We assumed that another 51 cases would not successfully rebut the PMV and have no change in SSI payment, because they have no other income. In the remaining 25 cases, however, we assumed that the PMV would not be rebutted and that the recipient has other income of at least $20, which would result in these recipients' experiencing a $20 decrease in monthly Federal SSI payments relative to current rules (because PMV reductions are subject to one-third of the FBR plus the $20 general income exclusion).

While we recognize that some applicants and recipients may not benefit from our proposed changes, we believe that retaining the three food questions is necessary to ensure that individuals who currently have the PMV rule applied to them, and thus have the ability to rebut the PMV, continue to have the PMV rule applied to them where appropriate. As discussed in the solicitation for comments, we welcome comments on alternative ways to achieve our stated goals related to retaining these food questions, including advancing equity and simplifying the program.

Clarifications to Our Definition of Income

When we remove food from the calculation of ISM, we would make that clear in our general definition of income. This change would ensure consistency among our regulations. Separate from the removal of food from the calculation of ISM, we would use this opportunity to clarify that income may be received constructively. Constructive receipt of income is part of our current policy, and this change would make the definition of income clearer.

Explanation of Changes

We propose to revise our ISM regulations to make clear in 20 CFR 416.1130 that we have removed food from the calculation of ISM. We would also revise the general definition of income in 20 CFR 416.1102 accordingly, and we would take the opportunity to clarify in the general definition of income that income may be constructively received. We would also make minor revisions to several other regulatory sections to conform and align with these updates. These other sections include 20 CFR 416.1103, 416.1104, 416.1121, 416.1131, 416.1132, 416.1133, 416.1140, 416.1147, 416.1148, and 416.1149.

Solicitation for Public Comment

As discussed elsewhere in this rulemaking, we are seeking public comment on this proposed rule. Questions the public may wish to consider when evaluating this proposed rule:

- Are there additional aspects of the ISM policy that we could simplify under current statutory authorities? What would be the effects of doing so?
- Are there any other policies that are related to ISM that we should consider

[54] See ''Key Statistics & Graphics.'' USDA Economic Research Service, *www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.*

[55] Heflin, Colleen; Altman, Colleen; Rodriguez, Laura. ''Food insecurity and disability in the United States.'' Disability and Health Journal, vol. 12, no. 2, 2019, pages 220–226, ISSN 1936–6574, *https://doi.org/10.1016/j.dhjo.2018.09.006.* Also, according to the USDA Economic Research Service, disability is an important risk factor for food insecurity. See Coleman-Jensen, Alisha; Nord, Mark. ''Disability is an Important Risk Factor for Food Insecurity.'' 6 May 2013, *www.ers.usda.gov/amber-waves/2013/may/disability-is-an-important-risk-factor-for-food-insecurity.*

[56] These questions are: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive SNAP payments? If applicants or recipients answer ''yes'' to any of these questions, we will evaluate their ISM using the PMV rule. Food expenses would not be included in the calculation.

[57] See Tables 2 and 3 of our supplemental document titled, ''Tables of Administrative Data Related to In-Kind Support and Maintenance (ISM),'' available at *www.regulations.gov* as a supporting document for Docket SSA–2021–0014.

in the context of this proposed rulemaking?

- Do you have additional information that relates to or otherwise informs our description of the applicant or recipient experience under current ISM policies?
- Are there forms or other information collections that we have not noted that would or should require modification as a result of this proposed policy change?
- Are there other information collection improvements that could further reduce respondent burden, either under the current ISM policy or under the policy proposed in this rule?
- Is there data or research related to equity and the SSI population (or, more generally, low-income or disabled populations) that could also be used to inform the final rule?
- Is there data or research related to administrative burden and the SSI population (or, more generally, low-income or disabled populations) that could also be used to inform the final rule?
- Do you have any additional justifications for, or arguments against, this proposed rule?
- Are there other methods we could use to measure the time-savings associated with this proposed rule? Are there other methods of the value of time we could use to measure the opportunity costs associated with this policy?
- If you have had experience with the rebuttal process:
  - Are applicants and recipients to whom the PMV rule applies typically able to comprehend the requirements associated with rebuttal? Are there terminological or other plain-language improvements we could make to the rebuttal process to improve clarity or reduce burden on applicants and recipients?
  - Does the ''Rebuttal Rights Notification'' (included in the docket for this rulemaking) clearly communicate the purpose of and requirements for rebutting the PMV? Are there ways we could improve how this information is communicated?
  - Are there any regulatory, sub-regulatory, paperwork, or process improvements we could make to the PMV rebuttal process to reduce respondent burden or otherwise increase successful submission of rebuttal evidence?

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

When will we start to use this rule?

We will not use this rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Anticipated Transfers to Our Program

The primary anticipated impact of this rule is a small increase in monetary transfers from the government to SSI recipients. To estimate this, our Office of the Chief Actuary (OCACT) took a sample of 0.1% of all SSI recipients who are impacted by the current ISM policy—a total sample of 764 recipients. Based on the best available data, OCACT estimated that implementation of these proposed rules for all eligibility and payment determinations effective April 1, 2023, and later will result in an increase in Federal SSI payments of a total of about $1.5 billion over the period of fiscal years 2023 through 2032. This represents an increase in Federal SSI payments of 0.2%.

Of the 764 cases in our sample:

(1) (PMV to PMV) We estimate that 411 cases (54%) are individuals who are currently evaluated under PMV and would continue to be evaluated under PMV. As discussed in the preamble, there are multiple types of living arrangements that result in assessment under the PMV rule, including (1) individuals who live in another person's household and receive either food or shelter support, but not both; and (2) individuals who live in their own household and who receive in-kind shelter or food support, or both. In each of these PMV scenarios, some recipients currently receive the PMV reduction, currently $324.66 (after the general income exclusion is applied, if there is no other income, the current reduction is $304.66—the same as the VTR), while others rebut the PMV and have their Federal SSI payment reduced by a smaller amount. We estimate that of these 411 cases, 42 would have an increase in the monthly SSI payment as a result of this proposed rule. Of these 42 individuals, we estimate that 24 recipients would have no PMV reduction and that the other 18 recipients would have a lesser PMV reduction. We estimate that the average increase in the monthly Federal SSI payment among those 42 cases would be $91 in 2023. We estimate that roughly 10% of all PMV-impacted recipients, or roughly 43 thousand, (5% of the total population of ISM-impacted recipients), will see an increase in their Federal SSI payment as a result of this aspect of the rule.

In our review of these cases, we did not examine which types of the above-described living arrangements would see changes due to the proposed rule. There are three main groups of individuals who could see this type of change: (1) Individuals who live in someone else's home and receive only food support because they earmark their contribution to household shelter expenses. These individuals would not be considered to be receiving countable ISM under the proposed rule as long as their contribution to shelter expenses meets their pro rata share. (2) Individuals who live in someone else's home and receive only shelter support,

because they earmark their contribution to household food expenses. These individuals might see their ISM decrease to zero dollars if they no longer need support and are able to contribute to their household expenses that cover their pro rata share. (3) Individuals who live in their own household and receive both food and shelter support. These individuals would see a decrease in their ISM amount, if their countable ISM falls below the PMV and they choose to rebut.

(2) (VTR to VTR) We estimate that 231 cases (30%) are individuals who are currently evaluated under VTR and would continue to be evaluated under VTR. These are recipients who under current rules live throughout a month in another person's household and receive both food and shelter support from others living in the household, and under the proposed rules live throughout a month in another person's household and receive shelter support from others living in the household. Where the VTR rule applied under current policy and would apply under the proposed policy, there would be no change in ISM as a result of the proposed rule.

(3) (VTR to PMV) We estimate that 122 cases (16%) are individuals who are currently evaluated under VTR and would be evaluated under PMV under proposed rules. These are individuals who live in another person's household and receive in-kind shelter support, but who we anticipate will indicate they consume all their food separately, by asserting that they buy food separately from the household, that they eat all meals out, or that they receive Supplemental Nutrition Assistance Program (SNAP) benefits. We estimate that 46 of these individuals would have an increase in their monthly SSI payment. On average we estimate that the increase in the monthly SSI payment would be $166 in 2023. Of these 46 individuals, we estimate that 11 would have no PMV reduction and that 35 would be charged less than the maximum amount. We estimate that roughly 6% of all ISM-impacted recipients, or roughly 48 thousand recipients, will see an increase in their payment as a result of this aspect of the rule. We estimate that another 51 individuals who would shift from VTR to PMV would not successfully rebut the PMV and would have no change in payment due to the proposed rule because they have no other income. We estimate that roughly 7% or 52 thousand ISM-impacted recipients would see no change in payment as a result of this aspect of the rule. By contrast, the other 25 individuals who would shift from VTR to PMV would not successfully rebut the PMV and would have other income. In these instances, recipients would experience a $20 reduction in their monthly Federal SSI payment. This is because under current rules they receive the VTR ISM reduction, which is one-third of the Federal benefit rate (currently $304.66), whereas under the proposed rule these recipients would receive the PMV ISM reduction, which is one-third of the Federal benefit rate plus the amount of the general income exclusion (currently $20) for a total Federal payment reduction for an individual of $324.66. When a recipient does not have other income, the $20 general income exclusion reduces the countable ISM amount. However, when a recipient has other income totaling at least $20, the $20 general exclusion is already used to reduce that income, and the payment is thus reduced by the full PMV amount when the PMV is not successfully rebutted. We estimate that roughly 3% of all ISM-impacted recipients, or roughly 26 thousand, will see a decrease in their Federal SSI payment as a result of this aspect of the rule.

Therefore, of the 764 cases in our sample, we estimate that 88 total cases (12% of those affected by current ISM rules and 1% of all Federal SSI recipients) would have an increase in monthly SSI payments. 25 total cases (3% of ISM-impacted recipients, less than 1% of all Federal SSI recipients) would have a decrease in monthly Federal SSI payments. We estimate that the average increase in the monthly Federal SSI payment would be $131 in 2023 for recipients experiencing an increase, and that the average Federal SSI payment reduction would be $20 for recipients experiencing a decrease. The table below provides a summarization of the case study.

Current rules	Proposed rules	Impact	Count	Percentage	Average change in monthly payments in 2023	Extrapolation to all ISM recipients (in thousands)	Aggregate change in monthly payments in 2023
PMV	PMV	No change in payment	369	48		383	
PMV	PMV	Increase in payment	18	2	$105	19	$1,889
PMV	No ISM	Increase in payment	24	3	81	24	1,934
VTR	VTR	No change in payment	231	30		240	
VTR	PMV	Increase in payment	46	6	166	48	7,658
VTR	PMV	No change in payment	51	7		52	
VTR	PMV	Reduction in payment	25	3	(20)	26	(500)

Anticipated Administrative Cost-Savings to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this proposal will result in net administrative savings of $25 million for the 10-year period from FY 2023 to FY 2032. The net administrative savings is mainly a result of unit time savings as field office employees will not have to spend time explaining and developing food as part of ISM during initial claims, pre-effectuations reviews, redeterminations, and post-eligibility actions. The savings are offset by costs to update our systems to remove food from the ISM calculation, costs to send notices to inform current recipients of the policy changes, costs to address inquiries from the notices, and costs as a result of more individuals' being eligible for SSI benefits, which increases claims, reconsiderations, appeals, CDRs, redeterminations, and post-eligibility actions.

Anticipated Time-Savings and Qualitative Benefits

We anticipate qualitative benefits from this proposal because, if implemented, it would simplify our policy and make the SSI claims process easier for applicants and recipients. The public benefits from simplifications to our program because it may take less time and effort to understand our program and its requirements, and may make it easier to comply with the program's requirements. Also, because SSI applicants and recipients would not

need to report as much information related to food expenses, they may save time that they otherwise would have spent gathering information and contacting us to report this information. As discussed in the Paperwork Reduction Act (PRA) section below, we estimate the time savings just on the SSI Application forms to be 1 minute per response. This represents an annual burden reduction of 95,668 hours. We estimate that these time-savings will result in cost-savings of $1,691,311 for the first year, and an estimated cost-savings of $16,913,110 over a 10-year period (we developed this figure by approximating the ''opportunity cost'' for the respondents, which varies per form).

However, we anticipate that the time-savings on the SSI application are only a limited component of the overall time-savings to the public. By eliminating the need to report food support, recipients will no longer need to report changes across the course of their receipt of SSI. Additionally, reporting food support, whether on the initial application or at a later point during post-award eligibility, oftentimes requires us to develop further, which may require completion of a variety of information collections and forms, to include SSA–8006–F4 (Statement of Living Arrangements, In-Kind Support and Maintenance); SSA–8011–F3 Statement of Household Expenses and Contributions); SSA–8000 (Application for Supplemental Security Income (SSI); SSA 8202–BK (Statement for Determining Continuing Eligibility for Supplemental Security Income Payment); SSA–8203–BK (Statement for Determining Continuing Eligibility for Supplemental Security Income Payment; SSA–5062 (Claimant Statement about Loan of Food or Shelter); SSA–L5063–F3 (Statement about Food or Shelter Provided to Another). As discussed in the PRA section, we estimate that this proposed change would not result in fewer forms completed. However, with a time savings of one minute per response, we estimate an overall time savings of 95,668 hours. Time savings in completing these forms not only benefits the recipient; we often must develop this information from third parties, whose time will also be saved through this proposal. While we do not maintain administrative data on the volume of post-award information collections pertaining to food-support reporting, we anticipate administrative time savings.

In many situations recipients fail to report receiving food in a timely manner. This requires us to redevelop this issue after a recipient's monthly benefit amount has been paid. This, in turn, may create an overpayment, which would require us to develop the issue further and contact the recipient for an interview. As discussed in the preamble, we expect that simplifying the ISM policy will reduce improper payments. The overpayment recovery process can, at times, be a time-intensive process to navigate, particularly for beneficiaries seeking to have their overpayment waived or reconsidered. While we have not quantified the amount of time beneficiaries spend working to resolve overpayments related to food ISM, we anticipate that this proposal would result in time savings associated with reduced improper payments.

Further, as discussed in the preamble, there are potential qualitative benefits to the proposal such as reduced food insecurity, enhanced social support networks, reduced frustration and anxiety among the beneficiary population associated with understanding and complying with complicated food-support ISM policies, potentially enhanced dignity with elimination of the need to report receipt of food to the government (which may appear intrusive to some applicants and recipients), and more consistent and equitable treatment of beneficiaries' various sources of food assistance.

Anticipated Costs

Outside of transfers, we do not anticipate more than *de minimis* costs associated with this rulemaking. Since this regulation would reduce reporting requirements and simplify the evaluation process for adjudicators, there are no costs in those areas. The SSI ISM policy is complex by nature, and sometimes those complexities make it difficult for the public to understand and follow the rules of the program. Better understanding of SSI program rules may occur over time. We do not anticipate that this proposal would affect labor market participation in any significant way, in part because of the limited understanding of the current policy in the beneficiary community that has been noted by some, including the SSAB.[58]

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule will require minor changes to the following forms:

1. SSA–8000–BK (OMB No. 0960–0229), Application for Supplemental Security Income;
2. SSA–8006 (OMB No. 0960–0174), Statement of Living Arrangements, In-Kind Support and Maintenance;
3. SSA–8011 (OMB No. 0960–0456), Statement of Household Expenses and Contributions;
4. SSA–5062 & SSA–L5063 (OMB No. 0960–0529), Claimant Statement about Loan of Food or Shelter and Statement about Food or Shelter Provided to Another;
5. SSA–8202–BK (OMB No. 0960–0145), Statement for Determining Continuing Eligibility for Supplemental Security Income Payment; and
6. SSA–8203–BK (OMB No. 0960–0416), Statement for Determining Continuing Eligibility for Supplemental Security Income Payment.

The form changes will result in a burden reduction of one minute per response per affected form, resulting in a 95,668-hour total burden savings. This figure represents the difference between the previous and new total estimated annual burden. See below for details of the burden calculations.

Below are charts showing the revised burden estimates, to be effective when we finalize the rule.

(1) SSA–8000–BK (0960–0229):

[58] See the Social Security Advisory Board Statement on the Supplemental Security Income Program, ''The Complexity of In-Kind Support and Maintenance.'' 2015, *https://www.ssab.gov/wp-content/uploads/2021/03/2015_-SSI_In-Kind_SupportMaintenance.pdf#:~:text=The%20Complexity%20of%20In-Kind%20Support%20and%20Maintenance%20Public,annual%20report%20to%20the%20President%20and%20the%20Congress.*

Modality of completion	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claim System	1,646,520	1	34	933,028	*$19.86	**21	***$29,974,897
SSA–8000–BK (Paper Form)	705	1	39	458	*19.86	**21	***14,001
Totals	1,647,225			933,486			***29,988,898

*We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

**We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

***This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(2) SSA–8006 (0960–0174):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or telephone wait time (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	109,436	1	6	10,944	*$11.70	**21	***$576,190
SSA–8006 (Paper Form)	12,160	1	6	1,216	*11.70	**21	***64,022
Totals	121,595			12,160			***640,212

*We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*).

*** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** *** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(3) SSA–8011 (0960–0456):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	398,759	1	14	93,044	*$28.01	**21	***$6,515,406
SSA–8011 (Paper Form)	21,000	1	14	4,900	*28.01	**21	***343,123
Totals	419,759			97,944			***6,858,529

*We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

**We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

***This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(4) SSA–5062 & SSA–L5063 (0960–0529):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost annual (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–5062 (SSI Claims System)	29,026	1	19	9,192	*$19.86	**21	***$384,311
SSA–L5063 (SSI Claims System)	29,026	1	19	9,192	*19.86	**21	***384,311
SSA–5062 (Paper Form)	29,026	1	29	14,029	*19.86	**21	***480,374
SSA–L5063 (Paper Form)	29,026	1	29	14,029	*19.86	**21	***480,374
Total	116,104			46,442			***1,729,370

*We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

**We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

***This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(5) SSA–8202–BK (0960–0145):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost annual (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	1,764,207	1	19	558,666	* $11.70	** 21	*** $13,760,815
SSA–8202–BK (Paper Form)	67,698	1	20	22,566	* 11.70	** 21	*** 541,242
Totals	1,831,905			581,232			*** 14,302,057

* We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*).
** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(6) SSA–8203–BK (0960–0416):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost annual (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	1,468,220	1	18	440,466	* $19.86	** 21	*** $18,953,252
SSA–8203–BK (Paper Form)	135,357	1	19	42,863	* 19.86	** 21	*** 1,792,127
Totals	1,603,577			483,329			*** 20,745,379

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

We calculated the aggregate burden saving associated with this proposed rule as follows:

2,250,261 (total current reporting burden across all six information collections) − 2,154,593 (total reporting burden across all six information collections reflecting a 1 minute burden reduction due to implementation of this rule) = 95,668 burden hours saved.

SSA is submitting an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

You can submit comments until March 17, 2023, which is 30 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 9601, 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, part 416, as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—Income

■ 1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. Amend § 416.1102 by revising to read as follows:

§ 416.1102 What is income?

Income is anything that you receive in cash or in kind that you can use to meet your needs for food or shelter. For purposes of this definition, income may be received ''actually'' or ''constructively.'' Income is received constructively, unless there are significant restrictions on your ability to receive it, if it is under your control or you can use it despite not actually receiving it. Sometimes income also includes more or less than you actually receive (see § 416.1110 and § 416.1123(b)). In-kind income is not cash but is something else that you can use to meet your needs for food or shelter. Exception: Food is not included in the calculation of in-kind support

and maintenance, which is a type of unearned income that we have special rules for valuing (see §§ 416.1130 through 416.1148).

■ 3. Amend § 416.1103 by revising paragraphs (a)(4), (b)(2), the example in paragraph (g) and paragraph (j) to read as follows:

§ 416.1103 What is not income?

(a) * * *

(4) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

* * * * *

(b) * * *

(2) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide social services; or * * *

* * * * *

(g) * * *

Examples: If your daughter uses her own money to pay your mortgage payment directly to the mortgage lender, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the transaction provides you with shelter; the mortgage payment is in-kind income for shelter to you. Similarly, if you book a hotel room on credit and your son later pays the bill, the payment to the hotel is not income to you, but the payment of the bill is in-kind income for shelter to you. In this example, if your son pays for the hotel bill in a month after the month of the hotel stay, we will count the in-kind income to you in the month in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, the payment for the lawn service is not in-kind income as defined in § 416.1102.

* * * * *

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in § 416.1130) which would be an excluded nonliquid resource (as described in subpart L of this part) if you kept it, is not income.

Example 1: A community takes up a collection to buy you a specially equipped van, which is your only vehicle. The value of this gift is not income because the van does not provide you with food or shelter and will become an excluded nonliquid resource under § 416.1218 in the month following the month of receipt.

Example 2: You inherit a house which is your principal place of residence. The value of this inheritance is income because the house provides you with shelter and shelter is income. However, we value the house under the rule in § 416.1140.

■ 4. Amend § 416.1104 by revising the fourth sentence and removing the fifth sentence in the paragraph to read as follows:

§ 416.1104 Income we count.

* * * One type of unearned income is in-kind support and maintenance (shelter), which we value depending on your living arrangement.

* * * * *

■ 5. Amend § 416.1121 by revising paragraph (h) to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(h) *Support and maintenance in kind.* This is shelter furnished to you that we value depending on your living arrangement. We use one rule if you are living throughout a month in another person's household receiving all your shelter from others living in the household. We use different rules for other situations in which you receive shelter. We discuss all of the rules in §§ 416.1130 through 416.1148.

■ 6. Amend § 416.1130 by revising paragraphs (a), the first, sixth and seventh sentence in paragraph (b) and paragraph (c) to read as follows:

§ 416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in kind (see § 416.1102). Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (*i.e.,* §§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones resides in his son's house. Mr. Jones receives a monthly SSI Federal benefit rate that is reduced by one-third. This one-third represents the value of the income he receives because he lives in the household of a son, throughout a month, who provides all of his shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We determine his SSI payment for that month considering the shelter he received from his son two months earlier in November. In determining the value of that shelter he received in November, we use the Federal benefit rate for January.

(b) * * * We calculate in-kind support and maintenance considering any shelter that is given to you or that you receive because someone else pays for it. * * * In those States, if the required amount of rent is less than the presumed maximum value, we will consider as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market value, whichever is less. In addition, cash payments made to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance. * * *

(c) *How we value in-kind support and maintenance.* We have two rules for valuing the in-kind support and maintenance that we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with shelter, unless we determine that you buy your food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits (see §§ 416.1131 through 416.1133). The presumed value rule applies in all other situations in which you receive countable in-kind support and maintenance (see §§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These conditions are discussed in §§ 416.1141 through 416.1145.

* * * * *

■ 7. Amend § 416.1131 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 416.1131 The one-third reduction rule.

(a) * * *

(2) Receive shelter from others living inside the household or from a combination of others living inside the household and others living outside the household. (If you do not receive shelter from others living in the household, see § 416.1140.)

(3) Do not buy food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits. If you buy food separately from the household, eat all meals out, or receive Supplemental

Nutrition Assistance Program benefits, any ISM received for shelter will be calculated under the PMV rule (see § 416.1140).

* * * * *

■ 8. Amend § 416.1133 by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 416.1133 What is a pro rata share of household operating expenses.

(a) * * * (If you are receiving shelter from someone outside the household, we value it under the rule in § 416.1140.)

* * * * *

(c) Household operating expenses are the household's total monthly expenditures for rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. * * *

■ 9. Amend § 416.1140 by revising to read as follows:

§ 416.1140 The presumed value rule.

(a) *How we apply the presumed value rule.* (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any shelter you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(12).

(2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—

(i) The current market value of any shelter you receive, minus any payment you make for it, is lower than the presumed value; or

(ii) The actual amount someone else pays for your shelter is lower than the presumed value.

(b) *How we determine the amount of your ISM under the presumed value rule.* (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the shelter you receive, we use the presumed value to figure your ISM.

(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the shelter you receive, we use the actual amount to figure your ISM.

■ 10. Amend § 416.1147 by revising paragraph (a), the paragraph heading in paragraph (b) and first sentence in paragraph (b)(1), paragraph (c) and the third sentence in paragraph (d)(1) to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) *Both members of a couple live in another person's household and receive shelter from others living in the household or a combination of others living inside the household and others living outside the household.* When both of you live in another person's household throughout a month and receive shelter from others living in the household or a combination of others living inside the household and others living outside the household, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).

(b) *One member of a couple is in a medical institution and the other member of the couple lives in another person's household and receives shelter from others living in the household or a combination of others living inside the household and others living outside the household.* (1) If one of you is living in the household of another person who provides you with shelter, and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives substantial Medicaid payments for his or her care (§ 416.211(b))), and is ineligible in the month for either benefit payable under § 416.212, we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). * * *

(c) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2).

(d) * * *

(1) * * * We value any shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2). * * *

* * * * *

■ 11. Amend § 416.1148 by revising paragraph (b) to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

* * * * *

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you (§§ 416.1160 through 416.1169), or with a parent whose income is not deemed to you because of the provisions of § 416.1165(i), any shelter that person provides is not income to you. However, if you receive any shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

■ 12. Amend § 416.1149 by revising paragraph (c)(1)(i) and (ii) to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

* * * * *

(c) * * *

(1)(i) If you enter a medical treatment facility where you are eligible for the reduced benefits payable under § 416.414 for full months in the facility, and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month (for which reduced benefits under § 416.414 are not payable) you enter or leave the facility. During any full calendar month you are in the medical treatment facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider shelter provided during a medical confinement to be income.

(ii) If you enter a medical treatment facility and you are eligible for either benefit payable under § 416.212, we also consider this a temporary absence from your permanent living arrangement. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month you enter the facility and throughout the period you are eligible for these benefits. We consider your absence to be temporary through the last month benefits under § 416.212 are paid unless you are discharged from the

facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

* * * * *

[FR Doc. 2023–02731 Filed 2–14–23; 8:45 am]

BILLING CODE 4191–02–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA22

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; extension of responsive comment period.

SUMMARY: The National Labor Relations Board (the Board) published a Notice of Proposed Rulemaking in the **Federal Register** on November 4, 2022, seeking comments from the public regarding its proposed rule concerning Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships (''NPRM''). The deadline for initial comments was extended on December 1, 2022, to February 2, 2023, with responsive comments due on February 16, 2023. The date to submit responsive comments to the initial comments is being extended due to an administrative error that occurred within *Regulations.gov* that inadvertently allowed six comments to be filed on a closed NLRB rulemaking docket from 2018. These comments have been moved to the correct NPRM docket.

DATES: The responsive comment period for the proposed rule published November 4, 2022, at 87 FR 66890, extended December 1, 2022, at 87 FR 73705, is further extended. Responsive comments to initial comments must be received by the Board on or before March 1, 2023.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.* Follow the instructions for submitting comments.

Delivery—Comments may be submitted by mail or hand delivery to: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001. Because of security precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov.* If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–1940 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Board sought comments from the public regarding its November 4, 2022, NPRM. Pursuant to an extension published on December 1, 2022, initial comments were due on February 2, 2023, and responsive comments were due on February 16, 2023. The Board is extending the responsive comment deadline due to an administrative error that occurred within *Regulations.gov* that inadvertently allowed six comments to be filed on a closed NLRB rulemaking docket from 2018. These comments have been moved to the correct NPRM docket. The new due date for submission of responsive comments is March 1, 2023.

Only comments submitted through *http://www.regulations.gov,* hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on *http://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *http://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

Dated: February 10, 2023.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2023–03215 Filed 2–14–23; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. OSHA–2021–0012]

RIN 1218–AD43

Arizona State Plan for Occupational Safety and Health; Proposed Reconsideration and Revocation; Withdrawal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reconsideration of final approval of State Plan; withdrawal.

SUMMARY: OSHA is withdrawing its proposed reconsideration of the Arizona State Plan's final approval status.

DATES: The proposed rule published on April 21, 2022, at 87 FR 23783, is withdrawn effective February 15, 2023.

ADDRESSES: *Docket:* To read or download comments and materials submitted in response to OSHA's revocation proposal, go to Docket No. OSHA–2021–0012 at *www.regulations.gov.* All comments and submissions are listed in the *www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions are available for inspection and, where permissible, copying at the OSHA Docket Office, U.S. Department of Labor; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. For

example, the full Document ID number for the comment submitted by the Industrial Commission of Arizona (ICA) and the Arizona Division of Occupational Safety and Health (ADOSH), which is discussed in more detail below, is Document ID OSHA–2021–0012–0228. OSHA will identify this comment, and other comments in the rulemaking, by the term ''Document ID'' followed by the comment's unique four-digit code.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Francis Meilinger, OSHA Office of Communications, U.S. Department of Labor, Washington, DC 20210; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor, Washington, DC 20210; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION: On April 21, 2022, OSHA published a **Federal Register** notice proposing reconsideration and revocation of OSHA's final approval of the Arizona State Plan for Occupational Safety and Health pursuant to 29 CFR 1902.32(f), 9 CFR 1902.44(b), and 29 CFR 1902.47–.48 due to fundamental deficiencies in the Arizona State Plan (87 FR 23783) (revocation proposal). The concerns prompting the notice, discussed at length in OSHA's revocation proposal, included Arizona's failure to adopt adequate maximum penalty levels, occupational safety and health standards, National Emphasis Programs and, most recently, the COVID–19 Healthcare Emergency Temporary Standard (ETS) (87 FR 23785–87). Consequently, OSHA proposed reconsideration and revocation of Arizona's 18(e) final approval determination until OSHA received satisfactory assurances that these fundamental deficiencies had been addressed and that Arizona remains committed to implementing a program for employee safety and health protection that meets the requirements of section 18(c) of the OSH Act.

Comments on OSHA's revocation proposal were initially due on May 26, 2022, and the notice tentatively scheduled an informal public hearing on the proposal to begin on August 16, 2022. However, OSHA extended the comment period to July 5, 2022 (87 FR 31442) in response to requests from the public. OSHA received 197 comments concerning the proposal during this initial comment period.

On July 5, 2022, the ICA and its subagency, the Arizona Division of Occupational Safety and Health (ADOSH) submitted a comment on the revocation proposal to advise OSHA that Arizona had completed several measures to address the concerns that OSHA identified (see Document ID 0228).

In response to this comment, on August 15, 2022, OSHA published a **Federal Register** notice that reopened the comment period on the revocation proposal to allow stakeholders further opportunity to comment on the proposed revocation in light of Arizona's efforts and postponed the informal public hearing (87 FR 50025). That extended comment period closed on October 14, 2022. OSHA received 28 additional comments during this extended comment period.

Arizona completed the following actions that address OSHA's concerns: adopted three outstanding final rules (Standards Improvement Project Phase-IV (''SIP–IV''), Beryllium in Construction and Shipyards, and Cranes and Derricks in Construction: Railroad Roadway Work); adopted an increase to its minimum penalties for serious and non-serious violations to match OSHA minimum penalty levels; passed a state law to ensure that Arizona's future maximum and minimum penalty levels will track OSHA's annual penalty level adjustments; passed a state law to authorize adoption of an ETS when either the ICA or OSHA deems the grave danger criteria met; and adopted the recordkeeping and COVID–19 log requirements in OSHA's COVID–19 Healthcare ETS as a permanent standard.

Additionally, in their comment on the revocation proposal, the ICA and ADOSH clarified that Arizona had adopted two National Emphasis Programs (NEPs) that OSHA had identified as not yet adopted by the State Plan, the NEP on Amputations in Manufacturing Industries, CPL 03–00–022 (adoption due June 10, 2020), and the NEP on Respirable Crystalline Silica, CPL 03–00–023 (adoption due August 4, 2020), and responded to OSHA's concerns regarding Arizona's failure to provide OSHA with the required documentation of adoption of the National Emphasis Program on Trenching and Excavation, as required by statute and regulations (Document ID 0228). OSHA now has the required documentation of Arizona's adoption of these measures. Finally, Arizona asserted that it had updated its State Plan Application (''SPA'') portal entries to accurately reflect adoption dates for NEPs and final rules (Document ID 0228).

Based on the foregoing, OSHA is withdrawing its proposal to reconsider the Arizona State Plan's final approval status.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20001 authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR parts 1902, 1952, 1953, 1954, and 1955.

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–03183 Filed 2–14–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 550

[Docket No.: BOEM–2023–0012]

RIN 1010–AE11

Protection of Marine Archaeological Resources

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: BOEM proposes to require lessees and operators to submit an archaeological report with any oil and gas exploration or development plan they submit to BOEM for approval of activities proposed on the Outer Continental Shelf (OCS). An archaeological report is currently required only if the plan covers an area that a BOEM Regional Director has reason to believe may contain an archaeological resource. This proposed rule would increase the likelihood that archaeological resources are located and identified before they are inadvertently damaged by an OCS operator, thereby assuring compliance with section 106 of the National Historic Preservation Act (NHPA). This proposed rule would define the minimum level of survey information necessary to support the conclusions in the archaeological report, the procedure for reporting possible

archaeological resources, the procedure for continuing operations when a possible resource is present, and what to do if an unanticipated archaeological resource is discovered during operation.

DATES: Your comments on the substance of this rulemaking must be received by BOEM on or before April 17, 2023. BOEM may not consider comments received after this date. Your comments on the information collection (IC) burden in this rulemaking must be received by the Office of Management and Budget (OMB) and BOEM on or before March 17, 2023. The IC deadline does not affect the deadline for public comments on the substance of the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please reference in your comment ''Protection of Marine Archaeological Resources, RIN 1010–AE11.''

- *Federal rulemaking portal: https://www.regulations.gov.* In the search box entitled ''Search for dockets and documents on agency actions,'' enter ''BOEM–2023–0012'' and click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking.
- *Mail, delivery service, or email:* Send comments to the Department of the Interior, Bureau of Ocean Energy Management, Office of Regulations, Attention: Peter Meffert, 1849 C Street NW, Mailstop DM5238, Washington, DC 20240; or email to: *Peter.Meffert@BOEM.gov.*

You may submit comments on the IC burden of this rulemaking at *www.reginfo.gov/public/do/PRAMain.* From this main web page, find and submit comments on 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 Information Collection Clearance Officer, Office of Regulations, Bureau of Ocean Energy Management, Attention: Anna Atkinson, 45600 Woodland Road, (Mail code VAE–ORP), Sterling, VA 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–NEW in the subject line of your comments.

Instructions: All comments must include the agency name and docket number or the regulatory information number (RIN) for this rulemaking. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Availability of Comments'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *www.Regulations.gov* and search for the heading of BOEM–2023–0012 or contact BOEM at 1849 ''C'' Street NW, Washington, DC 20240, Attn: Bureau of Ocean Energy Management, Office of Regulations, ''Comments on the proposed Marine Archeology Rule.

FOR FURTHER INFORMATION CONTACT: For questions on any issues related to this rulemaking, contact Peter Meffert, Office of Regulations, Bureau of Ocean Energy Management (BOEM), at *peter.meffert@boem.gov* or at (703) 787–1610.

To see a copy of the IC request submitted to OMB, go to *https://www.reginfo.gov* (select ''Information Collection Review'', then go to ''Currently under Review'' to search for the rule). You may obtain a copy of the supporting statement for BOEM's IC by contacting Information Collection Clearance Officer, Office of Regulations, Bureau of Ocean Energy Management, Attention: Anna Atkinson, 45600 Woodland Road, (Mail code VAE–ORP), Sterling, VA 20166, or by emailing: *Anna.Atkinson@BOEM.gov.*

SUPPLEMENTARY INFORMATION:

Public Availability of Comments: Please include your name, return address, and phone number or email address with your comment, so we may contact you if we have questions regarding it. BOEM may post all submitted comments to the docket for this rulemaking.

You should be aware that your entire comment—including your name, address, phone number, email address, and any other personally identifiable information that you include—may be made publicly available. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe in such cover letter any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. Even if we withhold your information in the context of this rulemaking, your comment is subject to the Freedom of Information Act (FOIA) and any relevant court orders. If your comment is requested under FOIA or such court order, your information will only be withheld if we determine that one of FOIA's exemptions to disclosure applies or if the relevant court order is challenged. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

I. Table of Acronyms and Terms

Several acronyms and terms are included in this preamble. To ease the reading of this preamble and for reference purposes, we list the following acronyms and their meanings here.

ACHP Advisory Council on Historic Preservation
ANCSA Alaska Native Claims Settlement Act
APE Area of Potential Effect
BOEM Bureau of Ocean Energy Management
BSEE Bureau of Safety and Environmental Enforcement
CHIRP Compressed High Intensity Radar Pulse
CFR Code of Federal Regulations
CRA Congressional Review Act
DM Department Manual (Interior)
DOI Department of the Interior
DOCD Development Operations Coordination Document
DPP Development and Production Plan
EA Environmental Assessment
E.O. Executive Order
EP Exploration Plan
FOIA Freedom of Information Act
FR Federal Register
GOM Gulf of Mexico
GPS Global Positioning System
HRG High Resolution Geophysical
IC Information Collection
MMS Minerals Management Service
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
nT Nano-tesla
NTL Notice to Lessees
OIRA Office of Information and Regulatory Affairs (a component of OMB)
OMB Office of Management and Budget
OCS Outer Continental Shelf
OCSLA Outer Continental Shelf Lands Act
PRA Paperwork Reduction Act
RIA Regulatory Impact Analysis
ROWs Rights-of-Way
SBA Small Business Administration
SHPO State Historic Preservation Office(r)
THPO Tribal Historic Preservation Office(r)
U.S.C. United States Code

II. Background

BOEM's existing regulations require operators [1] to submit an archaeological

[1] In some cases, lessees perform the functions of operators acting on their own behalf and, in other cases, operators are contracted to perform certain functions on behalf of the lessee(s). For the purposes of this document, any reference to the term ''operator'' should be considered to apply to

report with an Exploration Plan (EP), a Development Operations Coordination Document (DOCD), a Development and Production Plan (DPP), or any other requests (*e.g.,* exploration permit requests) seeking BOEM authorization to disturb the seafloor (collectively, the ''plans'') only when a BOEM Regional Director has a ''reason to believe'' that an archaeological resource may be present. BOEM interprets this ''reason to believe'' standard as requiring its Regional Directors to either have evidence that such a resource is present or to use a predictive model that indicates a resource is likely to be present in the area.

Prior to 2005, BOEM's predecessor agency, the Minerals Management Service's (MMS) regulation under 30 CFR 250.194, ''What archaeological reports and surveys must I submit?'' stated: ''If it is likely that an archaeological resource exists in the lease area, the Regional Director will notify you in writing.'' That regulation was revised in 2005 to clarify the basis for requiring an archaeological survey, a type of geophysical survey that is suitable for locating potential archaeological resources. The revised regulation stated: ''If the Regional Director has reason to believe that an archaeological resource may exist in the lease area, the Regional Director will require in writing that your EP, DOCD, or DPP be accompanied by an archaeological report.'' In explaining the revision, the preamble to the 2005 proposed rule clarified the basis upon which the Regional Director would invoke the requirement for an archaeological survey on a lease area:

> Because it cannot be determined whether it is ''likely'' that an archaeological resource exists on a specific lease area until the archaeological survey has first been conducted, the wording would be changed to state, ''if the Regional Director has reason to believe that an archaeological resource may exist.'' The ''reason to believe'' is established by a technical analysis of existing archaeological, geological, and other pertinent environmental data. (70 FR 14607, 14608, March 23, 2005.) [2]

Under the regulations after 2005, if the Regional Director invokes the requirement for an archaeological survey on a lease area in accordance with 30 CFR 550.194(a), the lessee or operator must produce an archaeological report. If the archaeological report suggests that an archaeological resource may be present, then an operator or lessee must either: ''(1) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or (2) Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by operations.'' To meet this second option, further archaeological investigation must be conducted by a qualified marine archaeologist and a geophysicist, using survey equipment and techniques the Regional Director considers appropriate. Finally, for the Regional Director to confirm that an archaeological resource does not exist, the lessee and operator must submit the investigation report to the Regional Director for review.

Beginning in 1982, MMS, developed a predictive model to attempt to define where archaeological resources were ''likely'' to exist in the Gulf of Mexico. MMS and BOEM used the model to designate certain OCS lease blocks as possessing a high- or low-probability for containing archaeological resources. This model relied primarily on archival evidence of reported lost shipwrecks.

After evaluating over 40 years of empirical evidence collected through research conducted by and for the oil and gas industry, academic institutions, and Federal and State agencies, BOEM concluded the model is unhelpful. BOEM's predictive model, despite several attempts at updating, has often failed to accurately predict the presence or absence of marine archaeological resources. In many cases, shipwrecks have been discovered in lease blocks where the model had not ''predicted'' any, and, conversely, operators surveyed lease blocks where the historical evidence suggested a shipwreck should be located and found nothing. This problem is compounded by the fact that the scarcity of historical and archival materials correlates to the age of the shipwreck or archaeological resource, such that the resources least likely to be accurately identified in the models are sometimes the oldest and most significant (see discussion in section III of this preamble). BOEM determined that previously undiscovered archaeological resources may be present in any OCS lease block in any BOEM region regardless of the model's results. Because the model's accuracy hinges on sufficiently accurate and robust underlying data and because such data is neither accurate nor robust for the offshore environment, BOEM determined that a better approach is necessary.

BOEM proposes to delete the ''reason to believe'' standard and to require lessees and operators to submit an archaeological report with all plans that propose seabed disturbance. This report must be based on a site-specific, high-resolution geophysical (HRG) survey that effectively identifies potential archaeological resources. HRG surveys are routinely used in the offshore environment to identify the presence or absence of potential geological and man-made hazards, sensitive biological habitats, and marine archaeological resources. In keeping with professional standards that have evolved since the existing regulations were adopted, this proposed revision would define the minimum level of survey information necessary to support the conclusions in the archaeological report. The proposed changes would improve BOEM's fulfillment of its ''reasonable and good faith identification effort'' under the NHPA and its development of appropriate mitigations to avoid damaging historic and archaeological resources under the National Environmental Policy Act (NEPA).

III. Critique of the Predictive Model and Other Alternatives to Direct Survey [3]

In 2003, MMS tested the accuracy of the predictive model, and ''it was found that many of the wrecks identified in offshore surveys are not located in designated high-probability blocks. Statistical analyses revealed that there is no significant difference in the likelihood of finding a shipwreck in a designated high-probability lease block and finding one in a lease block not so designated.'' [4] Because shipwrecks potentially may be found in all federally managed OCS acreage, BOEM's use of predictive models may be under-predicting shipwreck locations. Additional BOEM-funded studies [5] have

lessee(s), as well, to the extent that they perform the functions that would typically be contracted to a third party.

[2] *https://www.federalregister.gov/documents/2005/03/23/05-5678/oil-and-gas-and-sulphur-operations-in-the-outer-continental-shelf-ocs-data-release-and-definitions.*

[3] BOEM has additional models that focus on sea-level rise and where previously habitable lands may have existed during the last glacial maximum. These gross resolution models provide information related to the depths where the sub-bottom profiler data will be required.

[4] Pearson, C.E.; S.R. James, Jr., M.C. Krivor, S.D. El Darragi, and L. Cunningham. 2003. Refining and revising the Gulf of Mexico OCS Region High Probability Model for Historic Shipwrecks (Volume 1). URL: *https://espis.boem.gov/final%20reports/3033.pdf.*

[5] See: Enright, J.M., R. Gearhart II, D. Jones, and J. Enright. 2006. Study to Conduct National Register of Historic Places Evaluations of Submerged Sites on the Gulf of Mexico Outer Continental Shelf. U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico OCS Region, New Orleans, LA. OCS Study MMS 2006–036. URL: *https://espis.boem.gov/final%20reports/3595.pdf.* 136 pp; Evans, A.M., M.E. Keith, E.E. Voisin, P. Hesp, G. Cook, M. Allison, G. da Silva, and E. Swanson. 2013. Archaeological analysis of submerged sites on

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reinforced this conclusion, such as is demonstrated in a peer-reviewed article by Lugo-Fernández et al. (2007), which stated that this model has proven itself to be ineffective at predicting the location of shipwreck sites on the Gulf of Mexico OCS and in deep water.[6]

These conclusions led BOEM's predecessor agency, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), to implement a new pre-seabed disturbance survey policy, which BOEMRE presented to operators during a workshop held in March 2011. BOEM currently applies this policy, when appropriate, to plans in lease areas outside of OCS lease blocks designated by its predictive model as highly probable for containing archaeological resources.

Under this policy, BOEM prepares an environmental assessment under NEPA for any plan that includes a subsea or floating blowout preventor.[7] These environmental assessments require an archaeological analysis regardless of whether the lease block had been designated as high probability. To provide the information necessary to complete the environmental assessment, BOEM applies the pre-seabed disturbance policy to plans for areas that are not the subject of an existing archaeological report or adequate HRG survey. Under the pre-seabed disturbance policy, before BOEM allows any bottom-disturbing activity on the OCS that could damage archaeological resources, operators are required to perform a HRG survey of the seafloor where the planned activities would take place and to prepare an archaeological assessment to inform the environmental assessment.

Since implementation of the pre-seabed disturbance survey policy in 2011, over 100 new confirmed or potential shipwrecks have been identified, most of which are in lease blocks that would not have been surveyed if BOEM had relied only on the predictive model. This includes three of the most historically significant shipwrecks ever found in the Gulf of Mexico.[8]

Subsequent guidance from the Advisory Council on Historic Preservation (ACHP) clarified that: ''Federal agencies should evaluate the reliability and accuracy of any past work [past planning, research, and studies in determining the appropriate level of effort for identification, as well as past consultation efforts] because that factor,[9] as well as changing perceptions of significance, may affect what is considered 'reasonable.'' [10] The ACHP also states on its website that the ''[r]eview of existing information also assists in determining the types of eligible archaeological sites that might be present and their possible location. The lack of published regional archaeological information does not necessarily mean no eligible archaeological sites are present in the [Area of Potential Effect].'' [11]

Archival material indicative of the suspected location of shipwrecks is an inherently flawed dataset. First, not all wrecks were reported, and thus the historic record is incomplete. Shipwrecks occurring far from shore likely had no witnesses or survivors to make a wreck report. The reports that are in the record are most often associated with more recent losses (*e.g.,* post-19th century), meaning the older the shipwreck, the less likely archival information of its loss exists. Of the shipwreck sites now identified in the Gulf of Mexico, for example, over 58 percent cannot conclusively be associated with any archival evidence whatsoever. Second, of those that were reported (typically by the surviving family or businesses making claims to insurance companies against losses), a majority were listed as ''somewhere in the Gulf of Mexico.'' Though evidence of these reported wrecks exists, useful information pertaining to their location is often limited or nonexistent. For those few wrecks with a location listed in the record, the reliability of the wreck location is necessarily suspect [12] given the obvious absence of modern navigational and communications technology (*e.g.,* GPS).[13] Subject matter experts have acknowledged this ''unreliability in the reported positions of loss for so many vessels. Because of the nature of the reports of loss on these vessels, it is impossible to entirely overcome this built-in error in the data.'' [14]

The predictive model approach may work onshore, where decades of development have resulted in extensive documentation of archaeological resources by State historic preservation offices (SHPOs), Tribal historic preservation offices (THPOs), Federal agencies, land records offices, academic researchers, and non-governmental organizations (NGOs), and where the onshore topography is readily accessible for analyzing past settlement patterns. In contrast, the OCS remains a frontier territory that has yet to be fully explored for archaeological resources. In most cases, cultural resource documentation

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the Gulf of Mexico Outer Continental Shelf. U.S. Department of the Interior, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, New Orleans, LA. OCS Study BOEM 2013–01110. URL: *https://espis.boem.gov/final%20reports/5332.pdf* 432 p.; and Krivor, M.C., J. de Bry, N.J. Linville, and D.J. Wells. 2011. Archival investigations for Colonial-era shipwrecks in ultra-deepwater within the Gulf of Mexico. U.S. Dept. of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, New Orleans, LA. OCS Study BOEMRE 2011–004. URL: *https://espis.boem.gov/final%20reports/5109.pdf* 166 pp.

[6] Horrell, C.E., D. Ball, M. Damour, and J.B. Irion. 2010. Issue of Historic Preservation in the Gulf of Mexico Region. U.S. Dept. of the Interior, Bureau of Ocean Energy Management Gulf of Mexico OCS Region, New Orleans, LA. OCS Study BOEM 2010–000. 17 pp.

See also: Lugo-Fernández, A., D.A. Ball, M. Gravois, C. Horrell, and J.B. Irion. 2007. Analysis of the Gulf of Mexico's Veracruz-Havana route of La Flota de La Nueva España. Journal of Maritime Archaeology 2:24–47. URL: *https://link.springer.com/article/10.1007/s11457-007-9015-5.*

See also: Damour 2011.

[7] A blowout preventer (BOP) is a specialized valve or similar mechanical device, used to seal, control and monitor oil and gas wells to prevent blowouts, the uncontrolled release of crude oil or natural gas from a well. Blowout preventers were developed to cope with extreme erratic pressures and uncontrolled flow (formation kick) emanating from a well reservoir during drilling, which could lead to a potentially catastrophic event known as a blowout.

[8] Brennan, M., J. Irion, F. Cantelas, J. Delgado, A. Borgens, F. Hanselmann, C. Horrell, The Monterrey Shipwrecks: Characterization of Three Early 19th Century Shipwrecks in the Gulf of Mexico, *Oceanography* 27(1) Supplement: 30–32.

[9] The factor is the reliability and accuracy of any past work, as defined by the brackets. See the guidance questions cited in subsequent footnote for additional information.

[10] *https://www.achp.gov/Section_106_Archaeology_Guidance/Questions%20and%20Answers/Determining_which_archaeological_sites_are_significant_identification.*

[11] *https://www.achp.gov/Section_106_Archaeology_Guidance/Questions%20and%20Answers/Determining_which_archaeological_sites_are_significant_identification. Response* to question 24.

[12] Navigation accuracy is one factor that impacts the reliability of a wreck location: As the ship sinks, sea state and currents act on it. As a result, the wreck does not necessarily settle intact immediately under its surface location. Over time, geo and hydro forces may act on the wreck to further move its location. Another factor is the ability to communicate the floundering ship's location to other, off-ship people.

[13] Although the Global Positioning System (GPS) was not initially envisioned for worldwide civilian use, the U.S. Government redefined the mission of GPS to include international civilian uses in 1983. Until May 2000, the GPS service provider intentionally degraded the signal to deny accurate positioning service to U.S. adversaries. For this reason, reports of shipwreck losses made and wreck locations identified prior to May 2000 will be of limited utility, even if the report or wreck occurred after the advent of GPS. In all cases, the older the wreck, the less accurate the archival information pertaining to its location. U.S. Department of Transportation. 2009. Global Positioning System (GPS) Civil Monitoring Performance Specification. Available at: *https://www.gps.gov/technical/ps/2009-civil-monitoring-performance-specification.pdf.*

[14] Pearson et al. 2003 (Volume II: Technical Narrative).

does not exist unless or until a lessee or operator chooses to develop a lease area.

Regardless of whether archival information exists, BOEM's subject matter experts, consultations, and scientific studies have demonstrated that extensive empirical evidence supports the proposition that shipwrecks potentially may be found within any lease block on the OCS. In 2021, BOEM undertook a study to compile maps of historic ship routes through the Gulf of Mexico over the past 400 years. The study conclusively determined that every part of the Gulf of Mexico potentially could contain a shipwreck site.[15] Therefore, any seabed-disturbing activities conducted in the Gulf of Mexico have the potential to cause an effect on historic properties, and, pursuant to 36 CFR 800.3(a)(1), that potential requires BOEM to comply with section 106 of the NHPA.

IV. National Historic Preservation Act

Section 106 of NHPA requires Federal agencies to consider the impacts its undertakings will have on historic properties. The ACHP is responsible for overseeing the Federal historic preservation review process established by section 106. Based on authority granted by NHPA, ACHP issued regulations (36 CFR part 800) that direct how Federal agencies, such as BOEM, should meet their section 106 responsibilities efficiently and effectively while giving due consideration to the historic properties that communities value. Notably, 36 CFR 800.4(b)(1) establishes the level of effort that agencies must exercise to identify potentially impacted historical resources. Agencies must make a ''reasonable and good faith effort'' to identify historic properties within the areas potentially affected by their actions. 36 CFR 800.4(b)(1). This effort may include the use of historical evidence, consultations, field samples, and surveys. Id.

In accordance with these regulations and the ACHP's updated advisory guidance, Federal agencies must define the ''area of potential effect'' (APE) when determining what is a reasonable and good faith effort to identify potentially affected historic properties. The ''identification effort [to identify historic properties] is reasonable when it is logically designed to identify eligible properties that may be affected by the undertaking, without being excessive or inadequate in light of [the background research, consultation, oral history interviews, sample field investigations, and field surveys].'' [16]

BOEM's determination that it should use a better method than the predictive model stems from the culmination of its past planning, research, studies, and findings that the predictive model is unreliable, as described in section II of this preamble.

Locating historic shipwrecks offshore present unique issues compared to locating terrestrial archaeological sites. Onshore, historic properties, including archaeological sites, are generally located where they are for a discernible cultural or practical purpose. Therefore, the location of these sites can often be determined through historical records, consultation with Tribes and SHPOs, or by examining the landscape itself. Conversely, historic shipwrecks are a result of unintended catastrophic events often occurring at random locations in the open ocean. Therefore, as discussed in section II, records of shipwrecks are scarce, and the records that do exist are often highly inaccurate. Where historical records or surveys fail to identify a historical resource onshore, an operator is typically onsite and can see and halt operations upon an unanticipated discovery. In contrast, offshore operations are underwater in locations that are not readily accessible and that have no sunlight. Compounding this problem, in many cases shipwrecks are partially or completely buried in sand and sediment below the seabed. As a result, they are not easily identified and may suffer extensive potential damage during offshore operations before the operator notices the site, if it is noticed at all.

Additional guidance from the Secretary of the Interior's standards and guidelines for identification of historical sites also highlights the unique circumstances posed by marine archaeology. The guidelines state that ''[s]pecial survey techniques may be needed in certain situations. [Specifically,] [r]emote sensing techniques may be the most effective way to gather background environmental data, plan more detailed field investigations, discover certain classes of properties, map sites, locate and confirm the presence of predicted sites, and define features within properties. Remote sensing techniques include aerial, subsurface and underwater techniques.'' [17]

V. Why the Proposed Standard Constitutes a Reasonable and Good Faith Effort

The ACHP has prepared regulations and guidance that outline what is required to meet the ''reasonable and good faith'' identification standard as part of the section 106 review process.[18] Before beginning the identification stage in the section 106 process, the ACHP regulations (36 CFR 800.4) require each Federal agency to:

(1) Determine and document the APE in order to define where the agency will look for historic properties that may be directly or indirectly affected by the undertaking;

(2) Review existing information on known and potential historic properties within the APE, so the agency will have current data; and

(3) Seek information from others who may have knowledge of historic properties in the area. This includes the SHPO, THPO and, as appropriate, Indian Tribes or Native Hawaiian organizations who may have concerns about historic properties of religious and cultural significance to them within the APE. BOEM has and continues to follow these steps, as appropriate, in areas where surveys will be conducted.

Following these initial steps, the ACHP regulations set out several factors an agency must consider in determining what is a ''reasonable and good faith effort'' to identify historic properties. 36 CFR 800.4(b)(1). The regulations call for the agency to ''take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects.'' *Id.* The Secretary of the Interior's standards and guidelines for identification provide guidance on this subject.[19] Although the ACHP standards note that the agency should also consider other applicable professional, State, Tribal, and local laws, standards, and guidelines, most of these materials do not apply in the OCS environment.

As noted, there are two prongs to the section 106 identification effort for historic properties, including archeological resources: reasonableness and good faith. As to reasonableness, the ACHP notes in a guidance document

[15] *https://www.boem.gov/oil-gas-energy/mapping-and-data/map-gallery/historic-sailing-routes-gulf-mexico-application.*

[16] *https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf.*

[17] *https://www.nps.gov/articles/sec-stds-identification-guidelines.htm.*

[18] *https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf.*

[19] *https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf.*

that a reasonable identification plan is one that includes consideration of the following factors:

- Documentation of the horizontal and vertical extent of the APE that accounts for direct and indirect effects;
- An explanation of how the factors cited above inform the content and intensity of the identification plan. This could include information on past work in the area, scope of Federal involvement in the undertaking, and the undertaking's magnitude and anticipated effects on any historic properties that might exist in the APE;
- A review of existing information on historic properties within the APE, including information about possible historic properties not yet identified;
- A cognizance of applicable professional, State, Tribal, and local laws, standards, and guidelines;
- A familiarity with methodologies used in other historic property surveys in the area that have been effective in terms of time and cost;
- A clear description of the steps that will be taken during field investigations, during the analysis of field results, and in the subsequent reporting and consultation, to determine the presence or absence of historic properties within the APE.[20]

Of these factors, the last two have the greatest relevance to the unique and largely unexplored OCS environment that BOEM manages.

Based on its review of all the applicable data and resources available, BOEM has concluded that modifying the existing survey requirements would be the most effective method for complying with the ACHP guidelines, including the reasonableness prong of the section 106 identification effort for historical properties and other archeological resources. BOEM believes this proposed rule is not excessively burdensome given the minimal incremental cost to operators. Requiring HRG surveys would not impose an excessive burden on operators because the archaeological survey would constitute only a minor addition to the other survey activities currently required and would impose a negligible cost relative to that of the overall operation.

Additionally, under the reasonableness prong, NHPA requires BOEM to consider the effects of the agency's actions on significant archaeological and cultural sites and take steps to eliminate or mitigate adverse effects. This proposed rule would help protect significant historical sites, such as shipwrecks, which may be difficult to impossible to remediate after the fact if damaged or harmed, by requiring operators to submit an archaeological report or other evidence based on an HRG survey. Due to higher resolution data from HRG surveys and increased confidence in determining the locations of potential archaeological sites, the proposed rule would enhance survey requirements and would likely result in more accurate location data and, thus, in generally less restrictive conditions of approval or areas of avoidance. The current policy risks disrupting oil and gas operations indefinitely in the case of an unanticipated discovery of an historic property during exploration, development, and production.

The second prong of the ACHP analysis is the good faith standard. According to the ACHP, an identification plan that is appropriate to the nature and scale of the undertaking is carried out in good faith when it meets the following criteria:

- The plan is carried out in consultation with, as appropriate, the SHPO, THPO, and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to historic properties within the APE;
- Is initiated in a timely manner that allows for appropriate analysis and reporting, with adequate time for review by the consulting parties;
- Is carried out by a qualified individual or individuals who meet the Secretary of the Interior's qualification standards and have a demonstrated familiarity with the range of potentially historic properties that may be encountered and their characteristics;
- Acknowledges the special expertise possessed by Indian Tribes and Native Hawaiian organizations in assessing the eligibility of historic properties that may possess religious and cultural significance to them (regardless of whether or not such Tribes and organizations meet the Secretary's qualification standards);
- Is fully supported by adequate funding and other necessary resources; and
- Is not compromised by lack of integrity or omission, such as manipulating or ignoring evidence.[21]

The proposed rule would fully comply with these criteria to satisfy the good faith prong of the section 106 identification effort for historical properties and other archeological resources. To the extent that BOEM is aware of any potential offshore resources that may be of concern to any Tribes or other Native American populations, those Tribes would be notified of any relevant survey activities in their areas of interest. The survey requirements, which BOEM proposes to modify, would be implemented during the plan or application process when an operator requests approval to engage in any activity that would involve potential site disturbance. The approval would be contingent on the site evaluation activities described below and would necessarily precede any operational or development activity at the proposed site. The qualification requirements for those conducting and evaluating the surveys are currently, and would continue to be, aligned with the Secretary's standards. The data used to prepare the relevant archaeological reports would be retained for BOEM's further review and analysis in accordance with sections 30 CFR 550.201(b) and 550.210(b).

VI. Implications for Lessees and Operators

As discussed in the RIA, the archaeological analysis and reporting requirements represent an extremely small marginal addition to the survey activities that BOEM already requires, and an even smaller portion of the overall OCS oil and gas development costs. The HRG survey data, from which archaeological assessments and reports are prepared, would be part of the same dataset that is already required of operators to identify shallow hazards (such as unexploded ordinance, shallow gas, pipelines, and other seafloor and sub-seafloor hazards) and to look for seafloor compatibility for oil and gas development activities.

If a potential archaeological resource is identified, the operator may be required to amend the project design to avoid the resource. However, this contingency is not substantially different from the current practice of modifying a project to find a more suitable substrate or to avoid shallow drilling hazards. Operators and lessees often reposition their planned construction or installation activities for reasons other than the presence of archaeological resources. Currently, pre-development surveys occasionally identify natural, geological, and modern anthropomorphic features through which operators do not wish to drill or lay a pipeline. In addition, the costs of conducting HRG surveys and archaeological assessments have been reduced significantly in recent years

[20] *https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf.*

[21] *https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf.*

with the improvement of remote sensing and navigation technologies. Furthermore, the benefits to industry of performing archaeological surveys and assessments before disturbing the seafloor are widely known and understood, and currently represent the common industry practice. Most operators understand that these surveys and reporting activities are necessary and that performing them is in their best interest. These surveys help avoid unanticipated delays caused by the discovery of archaeological resources after exploration and development activities commence.[22] If an operator discovers a seafloor hazard or archaeological site too late, it would be in danger of damaging it; this could cause the operator or lessee to incur significant costs while ''standing down'' expensive equipment.

The current regulations (which would be revised and redesignated as § 550.195 under this proposed rule) require operators to cease operations in the event an unanticipated archaeological resource is discovered. Existing 30 CFR 550.194(c). The ensuing cost from these delays have been high and have exceeded the annualized incremental direct costs that would be imposed by this proposed rule. The proposed rule is intended precisely to avoid such unanticipated discoveries, expenses, and delays.

Under the current regulations, lessees and operators also risk paying for costly mitigation. For instance, in 2001, one operator paid $250,000 to mitigate impacts to the Mica shipwreck, a post-installation discovery, after placing a pipeline through the center of the wreck.[23] Finally, impacting a site, damaging equipment, or both can cause adverse environmental impacts through contaminant releases or discharges, such as fuel, oil, and lubricants, from a shipwreck,[24] or by compromising pipeline integrity where a pipeline is placed unknowingly across an archaeological resource. For example, a pipeline inadvertently placed across a shipwreck may affect the wreck and the pipeline's integrity, especially if the pipeline was not designed for additional stresses from the potential shifting of the wreck as it is degraded by the presence and weight of the pipeline.

An HRG survey would reduce operator risk downstream in the project development, would enhance operator confidence that its activities would be conducted safely, and would lead to a better experience during the build or drill phases. Therefore, BOEM expects the incremental cost increase to industry of this proposed rule would be outweighed by the reduction in risks of unexpected delay and avoidable site damage.

VII. Section-by-Section Analysis

Part 550—Oil and Gas and Sulfur Operations in the Outer Continental Shelf

Subpart A—General

§ 550.105 Definitions

The proposed rule would amend the definition of the term ''Archeological resources'' to clarify that any historic property, as described in the National Historic Preservation Act (NHPA), would be considered an archeological resource for the purpose of BOEM's regulations. The new definition of Archeological resource would read as follows:

Archeological resource means the material remains of human life or activities that are at least 50 years of age and that are of archaeological interest, including any historic property described by the National Historic Preservation Act, as defined in 36 CFR 800.16(l).

This definition would encompass the following historical properties, as defined in 36 CFR 800.16(l):

(1) Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

This change is made to clarify that BOEM's use of the term archeological resource is meant encompass any property covered by the NHPA.

§ 550.194 How must I conduct my approved activities to protect archaeological resources?

The title of this section has been updated to reflect the fact that the response to an archeological discovery, and the remediation process, is no longer included in the content of this section but has been moved to the subsequent section.

§ 550.194(a)

The proposed rule would eliminate the ''reason to believe'' standard in the current regulations with respect to individual leases. It would recognize that universal performance of field surveys is necessary to identify potential archaeological resources and to assist BOEM in better meeting its NHPA section 106 obligations to make a ''reasonable and good faith effort'' to identify archaeological resources under ACHP's regulations. The proposed rule would require operators to submit to BOEM an archaeological report, refer to a previously submitted report meeting the necessary standards, or submit evidence demonstrating that a reasonable and good faith identification effort has already been performed. Operators would include these submissions with any EP, DOCD, or DPP, or other authorization permit requests that require disturbance of the seafloor.

§ 550.194(a)(1)

The proposed rule would also clarify that an archaeological report must be based on an HRG survey, because an HRG survey is the most scientifically sound means of obtaining the data for the archaeological report. The proposed rule would allow operators to submit an archaeological report based on an HRG survey of the APE as one option for complying with the requirement in § 550.194 to protect archaeological resources.

§ 550.194(a)(2)

The proposed rule would allow operators to submit a reference to an archaeological report based on an HRG survey of the APE that was previously submitted for the lease as a means to comply with the requirement in § 550.194. Such a reference would be allowed if the previously submitted survey complies with the parameters identified in the proposed rule and if the results of that previous survey reasonably remain valid, as determined by BOEM. This provision is designed to minimize duplicative surveys by allowing operators to use the data from previously conducted surveys, such as certain shallow hazard reports. BOEM

[22] ''One of the reasons the ACHP's regulation contains a post-review discovery provision [36 CFR 800.13] is that the level of effort is reasonable and in good faith, not 100 percent or exhaustive. The costs attendant with work stoppage because of a[n unanticipated] discovery should be reason enough for a Federal agency to put forth a competent professional effort at the identification stage.'' See *https://www.achp.gov/Section_106_Archaeology_Guidance/Questions%20and%20Answers/Determining_which_archaeological_sites_are_significant_identification.* Response to question 18.

[23] Atauz AD, Bryant W, Jones T, Phaneuf B. 2006. Mica shipwreck project deepwater archaeological investigation of a 19th century shipwreck in the Gulf of Mexico. 142 p. OCS Study 2006–072. Obligation No.: 14–35–01–01–CA–31178.

[24] *https://sanctuaries.noaa.gov/protect/ppw/welcome.html.*

may consider a previous survey and its associated report invalid if BOEM suspects that the seafloor environment has changed sufficiently to warrant a new HRG survey.

§ 550.194(a)(3)

The proposed rule would allow operators to comply with the requirement in § 550.194 by demonstrating that a reasonable and good faith effort to identify archaeological resources within the APE has already been performed. This provision is designed to minimize duplicative surveys by allowing operators to use, for example, previously collected data from non-operator commissioned sources, such as NOAA Coastal Surveys. BOEM would allow the use of such data it BOEM determines these sources are sufficient to identify possible marine archaeological resources at a degree of certainty reasonably similar or better than an HRG survey.

§ 550.194(b)

The proposed rule would require that the archaeological report or evidence required by § 550.194(a) be prepared and signed by a qualified marine archaeologist. This requirement would apply regardless of which option described in § 550.194(a) is used as the basis of the archaeological report or evidence. The proposed rule would further define a qualified marine archaeologist as one who meets the Secretary of the Interior's (Historic Preservation) professional qualifications standards [25] and has experience in conducting HRG surveys and processing and interpreting the resulting data for archaeological potential.[26]

§ 550.194(c)

The proposed rule would establish the minimum standards for conducting the geophysical survey upon which the archaeological report is based. It would also recognize that this survey would likely identify anomalous features on the seafloor that may not readily be identified, or excluded, as an archaeological resource. Archaeological resources on the OCS are likely to consist of either

(1) post-European contact shipwrecks or aircraft, or

(2) pre-European contact archaeological sites from the end of the last Ice Age,[27] when sea levels were about 460 feet (140 meters) lower than the present day and much of the OCS was exposed as dry land.

The proposed rule would require that geophysical surveys be conducted using state-of-the-art instrumentation and methodology that meets or exceeds scientific standards for conducting marine archaeological surveys. While BOEM outlines the minimum scientific standards in proposed paragraph (c), BOEM recognizes that emerging technologies and methods may be used to achieve or exceed these standards. In these instances, BOEM may approve a departure from the provisions of paragraph (c) of this section on a case-by-case basis if it meets the requirements in proposed paragraph (d).

§ 550.194(c)(1)

The proposed rule would establish the requirements for the navigation system to continuously register surface position of the survey vessel, specify the logging position data, and specify the presentation of geodesy information.

§ 550.194(c)(2)

The proposed rule would require the use of a total field magnetometer, gradiometer, or other similar instrument having equal or superior measurement capability for surveys conducted in waters of 100-meter depth or less. It would also establish the requirements for the collection of data necessary to assist in the identification of archaeological resources on the OCS. The sensor would be required to be towed in such a manner that a magnetic field produced by ferrous metal associated with a historic shipwreck [28] (*e.g.,* a wooden ship's fasteners, anchors, and cannons) can be detected.

The size of the magnetic field is directly related to the mass of ferrous material present. Magnetometers, gradiometers, or their equivalent are commonly used to detect historic shipwrecks because of the presence of ferrous material (*e.g.,* iron or iron alloy) associated with such shipwrecks. Although iron hulls only became popular beginning in the middle of the 19th century, even wooden ships contain ferrous materials. This material produces a magnetic field of varying size and intensity that is detectable by a magnetometer, gradiometer, or their equivalent as a distinct anomaly from the ambient magnetic field of the earth.

The magnetometer, gradiometer, or an equivalent sensor must collect data at a sufficient rate and pass through a shipwreck's magnetic field to register a reading. Therefore, the closer the sensor is to the source of the magnetism, the more readily it is detectable. The sensor's height above the seafloor should balance the proximity necessary to detect the presence of a shipwreck with ferrous materials on the one hand, and, on the other, the risk of snagging the instrument on the seafloor. In addition, it is important to minimize ''noise'' from extraneous electrical interference that produces false readings and impedes the sensor's ability to accurately register the magnetic signature of a shipwreck or other historic property. If the sensor is sensitive to detecting a variable of one gamma with no more than 3 gammas of interference, the ferrous mass that might be associated with an historic shipwreck should be detectable as a distinct anomaly from a horizontal distance of 50 feet (15 meters) or less from the sensor to the ferrous mass and a vertical distance of 20 feet (6 meters) or less, measured from the sensor to the seafloor.[29]

Because magnetometers measure total magnetic field strength, they may not be suitable in the vicinity of large structures, such as oil and gas platforms, pipelines, or wind turbine foundations, which mask the magnetic signature of smaller features. A gradiometer system, which measures gradient between two or more closely spaced magnetometers, or other comparable or novel technologies, should be considered for more precise results (*e.g.,* in identifying historically significant wooden merchant shipwrecks in the vicinity of the survey area) and for surveys close to large structures.

A wide array of archaeological resources might be encountered during a marine magnetic survey. At the extremes of this range, the largest

[25] Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines, 48 FR 44716 (Sept. 29 1983) *https://www.nps.gov/subjects/historicpreservation/upload/standards-guidelines-archeology-historic-preservation.pdf.*

[26] Id.

[27] The last glacial period began about 100,000 years ago and lasted until 25,000 years ago.

[28] A metal hulled shipwreck would most likely be recorded using a magnetometer. Most of ships through history were wooden shipwrecks until the modern era. These wrecks are more difficult to locate via geophysical methods.

[29] See Gearhart, II, R., D. Jones, A. Borgens, S. Laurence, T. DeMunda, and J. Shipp. 2011. Impacts of recent hurricane activity on historic shipwrecks in the Gulf of Mexico Outer Continental Shelf. U.S. Dept. of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, New Orleans, LA. OCS Study BOEMRE 2011–003. URL: *https://espis.boem.gov/final%20reports/5111.pdf.* 202 pp., and Camidge, K., P. Holt, C. Johns, L. Randall and A. Schmidt. 2009 Developing magnetometer techniques to identify submerged archaeological sites: Theoretical study report. Cornwall, UK: Cornwall Council 2009 Report Number: 2010R012. URL: *https://archaeologydataservice.ac.uk/catalogue/adsdata/arch-983-1/dissemination/pdf/Report/Developing_Magnetometer_Techniques_Theoretical_Study_Final_Report_Rev_02.pdf.*

resources should prove easy to identify, whereas the smallest would only be detected by the highest resolution magnetic surveys. However, a survey designed to resolve anomalies of at least 1,000 pounds (453 kilograms), with a minimum detectable deflection of 5 gamma (γ; 5 nanotesla [nT]), can be expected to identify archaeological material, such as a ship's guns, anchors, and concreted amalgamations of fastenings and fittings. Based on the reports cited above, a survey design of no more than 30-meter line spacing and a magnetometer, gradiometer, or their equivalent towed no more than 6 meters from the seafloor would typically be sufficient to locate most historically significant shipwrecks on the OCS.

§ 550.194(c)(3)

The proposed rule would require the use of a sub-bottom profiler system for surveys conducted in water depths of less than 140 meters (459 feet). It would also establish the technical requirements for the use of this equipment. For all sub-bottom systems used to comply with this paragraph, data produced from the system must be digitally recorded to allow signal processing to improve data quality and to export data to a workstation for integrated interpretation and mapping. BOEM requests comment on whether modifications to this provision should be considered in situations where the proposed activity has the potential to disturb pre-contact archaeological material. The Gulf of Mexico (GOM) may contain areas where the sediment overlying any potential archaeological resources may be so thick that the proposed activity would not have the potential to affect a site even if one were present.

Sub-bottom profilers work by transmitting sound energy in the form of a short pulse towards the seabed. The reflected energy intensity depends on the different densities of the sediments. The denser (harder) the sediments, the stronger the reflected signal. The principal use of sub-bottom profilers in archaeology is identifying submerged and buried landforms that might have been habitable by indigenous Americans during the end of the last Ice Age. The reflected energy can identify buried river channels, levees, point bars, and lake and marsh margins that are known to have been favored sites for settlement based on studies of analogous sites located on land. Imaging a vertical bed separation of 0.3 meters (1 foot) in the upper 10 to 15 meters (33 to 50 feet) of sediment allows for reconstruction of the paleo-landscape and identification of possible human habitation, which in turn provides the data necessary to avoid harming sites of potential scientific and Tribal interest. For example, high frequency Compressed High Intensity Radar Pulse (CHIRP) and parametric systems alone may be used to achieve this level of resolution and depth of penetration to adequately image the APE, and thereby provide suitable archaeological information.

§ 550.194(c)(4)

The proposed rule would require the use of a side-scan sonar or equivalent system in all water depths. It would also establish the technical requirements for the use of this equipment and for the post-processing of data.

The side-scan sonar is an acoustic instrument that uses reflected sound waves to image the seafloor. Side-scan sonars may either be towed behind a ship or mounted in an autonomous underwater vehicle. Pulsed signals are transmitted from each side of the instrument and are reflected back from the seafloor and objects on it. The sonar signal is concentrated in narrow beams on both sides of the instrument. Sensitive hydrophones receive the returning sound. The signals from the hydrophone are sent to the ship for processing, and an image shows the strength of the returned sound. The darker parts of the image represent greater echo strength.

A higher frequency sonar will emit many pulses of sound per second, resulting in many more reflections being returned to the hydrophone. Like pixels in a photograph, more sound reflections result in a higher resolution image of the object reflecting the sound waves. A trade-off exists between resolution and range: given how sound travels in water, the higher the frequency of the sound, the shorter the distance over which it will travel. The greater the range, the fewer passes are needed to image the seafloor, but the less resolute the resulting image may be. Apart from this range versus resolution trade-off, a gap or ''nadir'' exists directly below the instrument, where no sound waves were directed.

Deploying the sensor at a height above the seafloor of 10 to 20 percent of the range ensures that the nadir is minimized and that objects at the farthest extreme of the range are detected. To ensure that the nadir is imaged, the sonar should have overlapping coverage between the right and left channels on adjacent survey transects. One hundred percent overlapping coverage of the seafloor (*i.e.,* 200 percent seafloor coverage) ensures that significant resources are not missed in the survey. (For comparison, 150 percent seafloor coverage only extends half-way across the swath coverage from an adjacent line.) Greater than 200 percent overlapping coverage may be recommended to guarantee nadir coverage and account for survey vessel drift between lines, which may be an important consideration when surveying in deep water. The 0.5-meter resolution standard is consistent with the capabilities of modern sonar systems when operated at appropriate frequency and range settings. This resolution is also consistent with current BOEM survey guidelines for shallow hazards.

Post-processing can improve sonar data quality by, for example, adjusting for slant range effects and variable speed along line. This provision would require post-processing in order to ensure that the data useful for interpretation and mapping.

§ 550.194(d)

The proposed rule would provide that the Regional Director may approve departures, on a case-by-case basis, from the performance standards outlined in § 550.194(c). The Regional Director would determine if the departure is necessary because ordinary application of those standards would be impractical or unduly burdensome; would be unnecessary to achieve the intended objectives of the marine archaeology program; would not conserve the natural resources of the OCS; would not protect life (including human and wildlife), property, or the marine, coastal, or human environment; or would not protect sites, structures, or objects of historical or archaeological significance.

§ 550.194(e)

Any departures approved under proposed § 550.194(d) must be documented in writing, consistent with the OCS Lands Act, protect the archaeological resources to the same degree as if there was no approved departure from the regulations, meet the same reasonable and good faith identification effort required by NHPA section 106, and not impair the rights of third parties. This would allow BOEM to ensure that its archaeological report requirements remain in compliance with the NHPA.

§ 550.194(f)

The proposed rule would permit BOEM to reject any archeological report if the survey was not prepared in accordance with the requirements of paragraph (c) in this section or any BOEM-approved departure to the survey requirements. The proposed rule would

also permit BOEM to reject any archaeological report if the results produced from the survey do not meet the data and resolution requirements specified in paragraph (c), regardless of whether the survey was otherwise conducted appropriately.

BOEM recognizes that a properly conducted survey may fail to identify potential archaeological resources as a result of equipment failure, processing errors, instrument interference, adverse weather, or other non-survey parameter related failure. For example, geomagnetic storms occurring during an archaeological survey can produce false positives when using a magnetometer (*i.e.,* produce a magnetic signature that can easily be mistaken as a potential archaeological resource). Survey designs should avoid the collection of data during geomagnetic storms or incorporate a base station or gradiometer, as these configurations are effective at removing temporal variance and isolating spatial variance in magnetic data.[30] The operators are responsible for following the standards in § 550.194(c) to obtain useable information. Operators must ensure that any factors affecting the quality of the data are avoided and addressed, or areas resurveyed as necessary.

§ 550.194(g)

This provision specified what must be done if the archaeological report or evidence mentioned in paragraph (a) of this regulation suggests that an archaeological resource may be present. The proposed rule would establish the two courses of action for operators to proceed with operations if the archaeological report or evidence required by § 550.194(a) suggests that an archaeological resource may be present.

§ 550.194(g)(1)

The proposed rule would provide operators the option of relocating operations so as not to adversely affect an area where known or suspected archaeological resources exist.

§ 550.194(g)(2)

The proposed rule would, in the alternative to paragraph (g)(1), also provide operators the option of establishing, to the satisfaction of the Regional Director, that an archaeological resource does not exist or will not be affected by operations or that the operator will take measures determined by the Regional Director to protect the archaeological resource during operations. The rule would further specify that, if high-resolution remote sensing alone is not sufficient to determine whether a seabed anomaly is an archaeological resource, the Regional Director may require the operator to conduct further archaeological investigation, under the supervision of a qualified marine archaeologist, using equipment and techniques the Regional Director considers appropriate.

In the event that the Regional Director requires additional investigations, the operator would be required to submit a report documenting the investigation to the Regional Director for review.

§ 550.194(g)(2)(ii)

The proposed rule would provide that, if, based on the information in the archaeological report or other evidence, the Regional Director determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the Regional Director will notify the operator immediately of the steps to be taken to protect the archaeological resource.

The proposed rule would replace the current § 550.194(b) and emphasize that the operator must take no action that may adversely affect an archaeological resource until the Regional Director specifies measures the operator must take to protect the resource.

§ 550.194(g)(3)

If the Regional Director determines that an archaeological resource is likely to be present in the lease area and is likely to be adversely affected by operations and if the Regional Director determines that there is no feasible means to avoid this adverse effect, the Regional Director would be allowed to prohibit operations in the APE.

§ 550.195 What must I do if I discover a potential archaeological resource while conducting operations on the lease or right-of-way area?

BOEM proposes to move the current 30 CFR 550.194(c) to the new § 550.195. Moving the provisions to a separate section would improve the overall organization of the regulations. In addition to moving the provision to its own section, BOEM proposes expanding on the specificity of the requirements. The existing regulations simply require that operations be halted immediately within the area of the discovery and that the discovery be reported to the BOEM Regional Director.

§ 550.195(a)

Paragraph (a) of the proposed rule would require the operator to immediately halt seafloor disturbing operations within at least 305 meters (1,000 feet) of the area of the discovery and report the discovery to the Regional Director within 72 hours. This proposed rule would establish these requirements to minimize the potential for risk to the resource.

§ 550.195(b)

Paragraph (b) would clarify that if BOEM determines that the resource is eligible for listing on the National Register of Historic Places in accordance with the applicable regulations, the Regional Director will specify measures that the lessee and operator must take to protect the resource during operations and activities. The current regulations in § 550.194(c) state that if the resource is significant, the Regional Director will determine how to protect it. If BOEM were to determine that the resource is eligible for listing on the National Register of Historic Places, and the operations and activities are under the jurisdiction of BSEE, BOEM will inform the BSEE Regional Director that the resource has been determined to be significant and advise BSEE on the appropriate means to protect it.[31]

§ 550.195(c)

Paragraph (c) would require that BOEM refer the discovery to BSEE to determine if the resource may have been adversely impacted by operations, the BSEE Regional Director will specify measures the lessee or operator must take to either demonstrate that no adverse impacts have occurred or to document the adverse impacts. BSEE would have the ability to take any additional measures that it determines are necessary to protect, or remediate damage to, any archeological resources that have been discovered.

VIII. Procedural Matters

A. Regulatory Planning and Review (Executive Order (E.O.) 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs

[30] Carrier, B. and M. Heinz. 2017. Geomagnetic Storms in Marine Magnetometer Data at Low Latitudes. Offshore Technology Conference. Houston, Texas, USA. May 1–4, 2017. Carrier, B. M., A. Pulkkinen, and M. Heinz. 2016. Recognizing Geomagnetic Storms in Marine Magnetometer Data: Toward Improved Archaeological Resources Identification Practices. STAR: Science & Technology of Archaeological Research. 2:1. URL: *https://www.tandfonline.com/doi/full/10.1080/20548923.2015.1099375.*

[31] This is BOEM's current practice. When BOEM is notified of a National Register-eligible archaeological discovery, it will notify BSEE's archaeologists, particularly if the discovery happens during post-permit-approved activities that are within BSEE's area of jurisdiction. Both agencies share the same GIS database of known National Register of Historic Places eligible sites, so this kind of information is further available there for review as a routine part of each agency's review processes.

(OIRA) in OMB will review all significant rules. OIRA has reviewed this proposed rule and determined that it is not a significant action under E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. 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 that regulations must be based on the best available science and that the rulemaking process must allow for public participation and open exchange of ideas. BOEM has developed this rule in a manner consistent with these requirements.

The costs and benefits of the proposed rulemaking are compared against the baseline scenario. The baseline scenario, or status quo, represents BOEM's assessment of the current practices under the current regulatory framework, including current industry practices and standards that are consistent with that framework. To define the baseline, BOEM examined the best available information regarding the current regulatory requirements and industry standards for conducting a HRG survey, which is the procedure for identifying possible archaeological resources.

In 2011, BOEM's predecessor, BOEMRE implemented a new pre-seabed disturbance survey policy, which BOEMRE presented to operators during a workshop held in March 2011. Those surveys were conducted, when appropriate, in lease areas that were not designated as highly probable of containing archaeological resource by the predictive model. These requirements included guidance that, prior to conducting any bottom-disturbing activity on the OCS that could damage archaeological resources, operators should perform a survey of the seafloor where the activities were to take place and prepare an archaeological assessment. Under the GOM region baseline scenario, HRG archaeological surveys are conducted using methods consistent with guidelines provided in Notice to Lessee (NTL) 2005–G07, entitled ''Archaeological Resource Reports and Surveys,'' [32] which recommends a maximum line spacing of 50 meters in water depths of 200 meters or less.

In the Alaska region, all HRG archaeological surveys completed since 2011 have been conducted using methods consistent with guidelines provided in NTL 2005–A01, ''Shallow Hazards Survey and Evaluation for OCS Exploration and Development Drilling,'' [33] and NTL 2005–A03, ''Archaeological Survey and Evaluation for Exploration and Development Activities.'' [34] These NTLs create archaeological survey guidance that includes detailed coverage of 1,200 meters or greater in all directions from a proposed activity and survey line spacing of 150 meters by 300 meters or less.

Most of the revisions in the proposed rule would have no or negligible cost impacts for operators. All expected incremental costs of the proposed rule are due to the requirement for HRG archaeological surveys in water depths of less than or equal to 100 meters, and for a magnetometer, gradiometer, or the equivalent towed at an altitude and lane spacing sufficient to detect ferrous metals or other magnetically susceptible materials of at least 1,000 pounds. BOEM has determined that the performance standard necessary to detect ferrous metal of at least 1,000 pounds is met by conducting archaeological surveys with a maximum lane spacing of 30 meters.[35]

Table 1 presents a summary of the qualitative benefits and an quantitative estimate of the annualized and total costs for the proposed rule. BOEM estimates that the proposed changes would increase total OCS archaeology survey costs over the next 10 years by $4,109,599, using a 3% discount rate or by $3,463,520, using a 7% discount rate.

TABLE 1—SUMMARY OF BENEFITS AND COSTS

Category	Estimate	Units			Notes
		Year dollars	Discount rate (percent)	Period covered (years)	
Benefits: Qualitative	Assures compliance with NHPA and strengthens archaeological resource protections. Reduces the likelihood of disturbing shipwrecks or other historical sites. Provides regulatory clarity and certainty for operators.				
Costs: Annualized Incremental Costs.	$410,960 346,352	2022	3 7	10	Increased compliance costs due to increased measurement capability requirements in water depths less than or equal to 100 meters.
Total Incremental Costs.	4,109,599 3,463,520	2022	3 7		

[32] *https://www.boem.gov/sites/default/files/documents/newsroom/BOEM%20NTL%20No.%202005-G07.pdf.*

[33] *https://www.bsee.gov/sites/bsee.gov/files/notices-to-lessees-ntl/drilling/05-a01.pdf.*

[34] *https://www.boem.gov/sites/default/files/documents/oil-gas-energy/BOEM%20NTL%20No.%202005-A03.pdf.*

[35] The explanation for this statement is provided in section VII of the preamble under § 550.194(c)(2), where it states: ''If the sensor sensitive to detecting a variable of one gamma with no more than 3 gammas of interference, the ferrous mass that might be associated with an historic shipwreck should be detectable as a distinct anomaly from a horizontal distance of 50 feet (15 meters) or less from the sensor to the ferrous mass and a vertical distance of 20 ft (6 meters) or less from the sensor to the seafloor.'' Based on the reports cited above [in the preceding footnote], a survey design of no more than 30-meter line spacing and a magnetometer, gradiometer, or their equivalent towed no more than 6 meters from the seafloor should be sufficient to locate most historically significant shipwrecks on the OCS.

BOEM welcomes comments on the regulatory impact analysis (RIA) for this proposed rule. The initial RIA can be found in the rulemaking docket at *www.regulations.gov.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to analyze the economic impact of regulations when there is likely to be a significant economic impact on a substantial number of small entities and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. When an agency issues a notice of proposed rulemaking, 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.'' (5 U.S.C. 603(a)).

BOEM has determined that this proposed rule would affect a substantial number of small entities. Operators under this proposed rule primarily fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211120 (crude petroleum extraction) and 211130 (natural gas extraction). For NAICS classifications 211120 and 211130, SBA defines a small business as one with fewer than 1,251 employees. All 70 OCS operating companies would be impacted by the proposed rule if they engage in activities disturbing the seafloor in areas that have not been previously surveyed and that would require an HRG survey and an archeological report under the proposed rule. BOEM estimates that of the 70 OCS lease operators, 21 are large and 49 are small.

The regulatory changes in this proposed rule are primarily clarifications, codifying existing practice, or reflect BOEM regulatory updates to maintain consistency with NHPA regulations. Most operators have been conducting HRG surveys and the archeological analysis consistent with the regulatory requirements in this proposed rule since at least 2011. Therefore, BOEM does not anticipate that these regulatory updates will have a significant economic impact on small or large operators. The expected incremental compliance costs of the proposed rule derive from the proposed requirement that HRG archaeological surveys in water depths less than or equal to 100 meters have a magnetometer, gradiometer, or the equivalent towed at an altitude and lane spacing sufficient to detect ferrous metals or other magnetically susceptible materials of at least 1,000 pounds. This performance standard is met by the requirement that operators conduct archaeological surveys with a maximum lane spacing of 30 meters.

BOEM estimates that the proposed changes would increase OCS archaeology survey costs by $4,725,000 over the next 10 years. The GOM archaeological survey costs are estimated to increase by $1,680,000, the Alaska costs by $3,045,000, depending on activity and cost factors discussed in section II of the initial RIA.

BOEM's estimate of the proposed rule's impact on small entities would vary depending on the OCS region where the archaeological surveys occur. Typically, the increased compliance cost would impact operators conducting activities in water depths of 100 meters or less. Operators that meet the definition of a small entity dominate the oil and gas industry on the GOM OCS, which is submerged generally under waters 200 meters or less in depth. Therefore, BOEM estimates most of the increased GOM compliance cost for survey lane spacing of 30 meters would be borne by operators that are small entities. In the Alaska region, all archaeological surveys are expected to be conducted by large entities. On the Alaska OCS, one company currently holds oil and gas leases. This company is considered a large entity under the SBA's definition. Therefore, BOEM estimates the increased compliance cost in Alaska would be borne by an operator that is a large entity. Compliance costs by business size can be seen in table 2 with various discount rates. BOEM does not expect new archaeological surveys in other OCS regions over the next decade.

TABLE 2—SMALL BUSINESS 10 YEAR COMPLIANCE COST ASSOCIATED WITH PROPOSED RULE

	Undiscounted cost	Discounted at 3%	Discounted at 7%
Large Business Total Incremental Costs (AK OCS Region)	$3,045,000	$2,633,533	$2,200,961
Small Business Total Incremental Costs (GOM OCS Region)	1,680,000	1,476,066	1,262,559

C. 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, because it: (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, or local government agencies, or geographic regions; and (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.

D. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Moreover, the proposed rule would not have disproportionate budgetary effects on these governments. BOEM has also determined that this proposed rule would not impose costs on the private sector of more than $100 million in a single year. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required and BOEM has chosen not to prepare such a statement.

E. Takings Implication Assessment (E.O. 12630)

This proposed rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

BOEM strives to strengthen its government-to-government relationship with American Indian and Alaska Native tribes through a commitment to consultation with the Tribes and recognition of their right to self-governance and Tribal sovereignty. BOEM also is respectful of its responsibilities for consultation with corporations established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* (ANCSA). BOEM has evaluated this proposed rule under the criteria in E.O. 13175, DOI's consultation policy, as described in the Department of the Interior Departmental Manual, part 512, chapters 4 [36] and 5 [37] (December 1, 2022), and BOEM's tribal consultation guidance (outlined in the Memorandum from William Y. Brown, Chief Environmental Officer, Bureau of Ocean Energy Management, to Bureau Program Chiefs and Regional Directors (June 29, 2018)).[38] BOEM has determined that the proposed rule may have tribal implications. BOEM has begun outreach to the Tribes and ANCSA corporations, and will follow Departmental and Bureau procedures for consultation during the development of this action.

I. Paperwork Reduction Act (PRA)

This proposed rule references existing and new IC requirements for regulations at 30 CFR part 550, subpart A. Submission to OMB for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is required. Therefore, BOEM will submit an IC request to OMB for review and approval and will request a new OMB control number, designated in this discussion as ''1010–NEW.'' Once the 1010–AE11 final rule is effective, BOEM will transfer the hour burden from 1010–NEW to OMB Control Number 1010–0114, which expires February 28, 2023, then discontinue the new number associated with this rulemaking. The ICs related to this rulemaking concern requirements under 30 CFR 550.194 and proposed 550.195. BOEM may neither conduct nor sponsor, nor are respondents required to respond to, a collection of information unless it displays a currently valid OMB control number.

The new and revised information collection requirements for 30 CFR 550.194 and proposed 550.195 identified below require approval by OMB. BOEM would increase the overall annual burden by 505 hours. The burden hours related to this rulemaking are shown in the following table, and burden hour changes are discussed below.

Citation 30 CFR 550 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
Information and Reporting Requirements				
194 (a), (c)	Prepare and/or submit archaeological reports or evidence. Submit archaeological and follow-up reports and additional information.	50	10 submissions	500.
194 (g)	Locate and protect archaeological sites. Submit archaeological and follow-up reports and additional information.[*].	Requirement not considered IC under 5 CFR 1320.3(b)(2).		
195 (a)	Report archaeological discoveries to the Regional Director	1	3 reports	3 hours.
194	Request departures from conducting archaeological resources surveys and/or submitting reports.[**].	1	2 requests	2 hours.
Total Burden			15 responses	505.
			$0 Non-hour cost burdens.	

[*] The time and financial resources necessary to comply with this requirement would be incurred in the normal course of business using existing contracts already in place by the operator.

[**] Departure requests do not occur often but are included in burden calculation to allow for the rare occurrence when a company would request a departure from conducting a survey or submitting a report.

• *Proposed 30 CFR 550.194(a):* The proposed rule would require that any EP, DOCD, or DPP, or any other request to conduct activities that may disturb the seafloor be accompanied by or contain an archaeological report and supporting evidence. BOEM proposes to increase the estimated annual burden hours to 500 hours (+500 annual burden hours over the currently approved burden).

• *Proposed 30 CFR 550.194(c):* The proposed rule would require that archaeological reports be based on a HRG survey of the APE. The high-resolution geophysical requirements proposed in 30 CFR 550.194(c) are also part of the requirements used for geological and geophysical IC (*i.e.,* shallow hazards surveys) under 30 CFR 550.214 and 550.244 that OMB approved in Control Number 1010–0151. Therefore, no additional burdens are expected to be placed on industry.

• *Proposed 30 CFR 550.194(g):* If an archaeological resource is likely to be present, the proposed rule would require an operator to either relocate the proposed operations to avoid adversely

[36] Available at *https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-4_2.pdf.*

[37] Available at *https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-5_2.pdf.*

[38] Available at *https://www.boem.gov/BOEM-Tribal-Consultation-Guidance/.*

affecting the resource or establish that the resource does not exist, will not be adversely affected by the operations, or will be protected by mitigation measures during the operations. The likelihood that operators would establish the archaeological resource is not present is low. If operators relocate the project to avoid the known archaeological resource, they could use resources already contracted and available on the project (without the delay of additional investigation). The operator likely will submit information related to archaeological resources to BOEM. The burdens related to the submission of archaeological resource information are accounted for in OMB approved Control Number 1010–0151. Therefore, BOEM has determined there will likely not be an additional burden on industry with this proposed provision.

- *Proposed 30 CFR 550.195(a):* The proposed rule would require the operator to notify the BOEM Regional Director of any archaeological resource discovery. This notification would likely occur during the operator's remote sensing phase or during deployment by a remotely operated vehicle for surveys related to hydrophones. BOEM expects that the occurrence would be low, so BOEM estimates the annual burden hours to equal 3 hours (1 hour × 3 responses) (+3 annual burden hours above the currently approved burden).
- The annual burden hours for departure requests would be 2 annual burden hours. (+2 annual burden hours above the currently approved burden).

Title of Collection: Protection of Marine Archaeological Resources (Notice of Proposed Rulemaking).

OMB Control Number: 1010–NEW.

Form Numbers: None.

Type of Review: New.

Total Estimated Number of Annual Responses: 15 responses.

Total Estimated Number of Annual Burden Hours: 505 hours.

Respondent's Obligations: Mandatory.

Frequency of Collection: On occasion.

If this proposed rule becomes effective and OMB approves the IC request 1010–NEW, BOEM would revise the existing OMB Control Number 1010–0114 for the affected subpart discussed above and would adjust the annual burden hours accordingly. The IC related to 30 CFR part 550 do not include questions of a sensitive nature. BOEM will continue to protect proprietary information according to FOIA and the Department of the Interior's implementing regulations.

In addition, PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burdens resulting from the collection of information. BOEM solicits your comments regarding non-hour cost burdens arising from this proposed rule. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup costs, and (2) annual operation, maintenance, and disclosure costs to provide the information. You should describe the methods you use to estimate your cost components, including system and technology acquisition, expected useful life of capital equipment, discount rates, and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the IC arising from this proposed rule; (3) for reasons other than to provide information or to keep records for the U.S. Government; or (4) as part of customary and usual business or private practices.

As part of BOEM's continuing effort to reduce paperwork and respondent burdens, BOEM invites the public and other Federal agencies to comment on any aspect of this IC, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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.

J. National Environmental Policy Act

BOEM proposes to comply with NEPA by relying on an existing categorical exclusion.[39] This proposed rule, if finalized, meets the criteria for categorical exclusion because the proposed activities fall within the bounds of 516 DM 15.4.C(1) and 43 CFR 46.210(e), which address regulatory functions ''for which the impacts are limited to administrative, economic, or technical effects and the environmental impacts are minimal.'' (516 DM 15.4(C)(1) The actions required by this rule are fundamentally administrative and technical and do not have the potential to cause significant individual or cumulative effects on the quality of the human environment. In addition, 516 DM 15.4.C(13) covers the category of actions required by this rule:

> Preliminary activities conducted on a lease prior to approval of an exploration or development/production plan or a Development Operations Coordination Plan. These are activities such as geological, geophysical, and other surveys necessary to develop a comprehensive exploration plan, development/production plan, or Development Operations Coordination Plan.

BOEM preliminarily has determined that this proposed rule, if finalized, would not involve any of the extraordinary circumstances that require further analysis under NEPA.[40] The final decision on the appropriate level of NEPA analysis will be made at the final rule stage.

K. Data Quality Act

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154).

L. Effects on the Nation's Energy Supply (E.O. 13211)

Under E.O. 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for ''significant energy actions.'' This should include a detailed statement of any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) expected to result from the action and a discussion of reasonable alternatives and their effects. This rulemaking will have no effect on the production, supply, distribution, or use of energy and is not expected to have any effect on the energy industry.

M. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.* BOEM will submit a rule report to each House of the Congress and to the Comptroller General of the United States along with the final version of this rule. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Clarity of This Regulation

BOEM is required by E.O. 12866, E.O. 12988, and by the Presidential memorandum of June 1, 1998, to write all rules in plain language. This means that each rule BOEM publishes must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

[39] See 43 CFR 46.205.

[40] *See* 43 CFR 46.215.

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that BOEM has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section. To better help BOEM revise the proposed rule, your comments should be as specific as possible. For example, you should specify the number of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 30 CFR Part 550

Administrative practice and procedure, Air pollution control, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons discussed in the preamble, the Bureau of Ocean Energy Management proposes to amend 30 CFR part 550 as follows:

Title 30—Mineral Resources

CHAPTER V—BUREAU OF OCEAN ENERGY MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—OFFSHORE

PART 550—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

Subpart A—General

■ 2. Amend § 550.105 by revising the definition of Archeological resource as follows:

§ 550.105 Definitions.

* * * * *

Archeological resource means the material remains of human life or activities that are at least 50 years of age and that are of archaeological interest, including any historic property described by the National Historic Preservation Act, as defined in 36 CFR 800.16(l).

* * * * *

■ 3. Revise § 550.194 to read as follows:

§ 550.194 How must I conduct my approved activities to protect archaeological resources?

(a) To protect archaeological resources, your EP, DOCD, or DPP, or any other request to obtain an authorization or permit from BOEM that involves disturbance of the seafloor, must be accompanied by or contain one of the following:

(1) an archaeological report based on a high-resolution geophysical survey of the Area of Potential Effects (APE) defined, pursuant to 36 CFR 800.16(d) of the Advisory Council on Historic Preservation's regulations implementing section 106 of the NHPA, as the depth and breadth of the seabed that could potentially be impacted by proposed activities;

(2) a reference to an archaeological report based on a high-resolution geophysical survey of the APE that you previously submitted for your lease, provided that any previously submitted survey complies with the survey parameters identified in these regulations and the results of the survey are, in BOEM's judgment, valid (BOEM may consider a survey or the resulting report to be invalid if BOEM suspects that changes to the seafloor environment warrant acquiring additional data, considering, for example, the time elapsed since the prior survey); or

(3) evidence demonstrating to BOEM's satisfaction that a reasonable and good faith effort to identify archaeological resources within the APE has already been performed, provided that the past efforts are sufficient to identify possible marine archaeological resources at a degree of certainty reasonably similar to or better than an HRG survey.

(b) The archaeological report and evidence described in paragraph (a) of this section must be prepared and signed by a qualified marine archaeologist. A qualified marine archaeologist must meet ''the Secretary of the Interior's (Historic Preservation) Professional Qualifications Standards'' and must have experience in conducting high-resolution geophysical surveys and processing and interpreting the resulting data for archaeological potential.

(c) The geophysical survey resolution for the surveys described in paragraph (a) of this section must be sufficiently detailed to identify potential archaeological resources and must be performed using instrumentation and methodology that is state-of-the-art and that meets or exceeds scientific standards for conducting marine archaeological surveys. The surveys must, at a minimum, adhere to the following operational requirements and performance standards:

(1) A state-of-the-art navigation system with sub-meter accuracy able to continuously determine the surface position of the survey vessel and in-water position of towed and autonomous survey sensors. Position fixes must be digitally and continuously logged along the vessel track. Geodesy information must be clearly presented and consistent across all data types.

(2) For geophysical surveys conducted in water depths of 100 meters (328 feet) or less, the survey must employ a total field magnetometer, gradiometer, or other similar instrument having equal or superior measurement capability. The magnetometer, gradiometer, or its equivalent must be towed as close to the seafloor as possible and sufficiently far from the vessel to isolate the sensor from the magnetic field of the survey vessel and the other survey instruments. The magnetometer, gradiometer, or its equivalent must be towed at a sufficient altitude to detect ferrous metals or other magnetically susceptible materials of at least 1,000 pounds (453 kg) in mass with a minimum magnetic deflection of 5 gamma (γ; 5 nanotesla [nT]), conducting archaeological surveys with a maximum lane spacing of 30 meters. An altimeter must be used to record the height of the magnetometer, gradiometer, or its equivalent in the water column. The altitude of the magnetometer, gradiometer, or its equivalent must be continuously recorded during data acquisition along the survey. The instrument's sensitivity must be 1.0 γ (1.0 nT) or less. Background noise level must not exceed a total of 3.0 γ peak to peak. The data sampling rate must be greater than 4.0 Hz to ensure sufficient data point density of at least 2 points per meter. All collected data must be recorded on a digital medium that can be linked electronically to the positioning data. Survey line, time, position, altitude, and speed must be annotated on all output data.

(3) For geophysical surveys conducted in water depths of 140 meters (459 ft) or less, a sub-bottom profiler system must be used to identify and map buried geomorphological features of archaeological potential that may exist within the horizontal and vertical APE, taking into account the geomorphology of the operational area and the parameters of the proposed project (including the maximum depth of disturbance from the proposed activities). The sub-bottom system must be capable of achieving a depth of penetration and resolution of vertical bed separation that is sufficient to allow

for the identification and cross-track mapping of features of archaeological potential (*e.g.,* shell middens, paleochannels, levees, inset terraces, paleolagoon systems). The sub-bottom profiler system employed must be capable of achieving a resolution of vertical bed separation of at least 0.3 meters (1 foot) in the uppermost 10 to 15 meters (33 to 50 feet) of sediments, depending on the substrate.

(4) In all water depths, a side-scan sonar or equivalent system must be used to provide continuous planimetric imagery of the seafloor to identify potential archaeological resources partly embedded in the seafloor. To provide sufficient resolution of seafloor features, BOEM requires the use of a system that operates at as high a frequency as practicable based on the factors of line spacing, instrument range, and water depth. The sonar system must resolve small, discrete targets 0.5 meters (1.6 feet) in length at maximum range. The instrument range must provide at least 100 percent overlapping coverage (*i.e.,* 200 percent seafloor coverage) between adjacent primary survey lines. Greater than 200 percent overlapping coverage may be necessary to guarantee nadir coverage and account for survey vessel drift between lines, which may be an important consideration when surveying in deep water. The side-scan sonar sensor must be towed above the seafloor at a height that is 10 to 20 percent of the range of the instrument. Data must be digitally recorded and visually displayed to monitor data quality and identify targets of interest during acquisition. The data must be post-processed to improve data quality by, for example, adjusting for slant range effects and variable speed along line.

(d) The Regional Director may approve a departure from the provisions of paragraph (c) of this section on a case-by-case basis if the Regional Director deems the departure necessary because the applicable requirements, as applied to a specific circumstance:

(1) are impractical or unduly burdensome;

(2) are not necessary to achieve the intended objectives of the marine archaeology program;

(3) fail to conserve the natural resources of the OCS;

(4) fail to protect life (including human and wildlife), property, or the marine, coastal, or human environment; or

(5) fail to protect sites, structures, or objects of historical or archaeological significance.

(e) Any departure approved under this section must:

(1) be consistent with requirements of the OCS Lands Act;

(2) protect the archeological resources to the same degree as if there was no approved departure from the regulations;

(3) satisfy section 106 of the National Historic Preservation Act and achieve results for identifying archaeological resources as if there was no approved departure from the regulations;

(4) not impair the rights of third parties; and

(5) be documented in writing.

(f) BOEM may reject any archeological report if the survey was not prepared in accordance with the requirements of paragraph (c) of this section or any BOEM-approved departure to the survey requirements. BOEM may also reject any archaeological report if the results produced from the survey do not meet the data and resolution requirements specified under paragraph (c) of this section, regardless of whether the survey was otherwise conducted appropriately.

(g) If the archaeological report or evidence mentioned in paragraph (a) of this section suggests that an archaeological resource may be present, you must:

(1) situate your operations so as not to adversely affect the area where the known or suspected archaeological resource may be located; or,

(2) establish, to the satisfaction of the Regional Director that an archaeological resource does not exist by conducting further archaeological investigation, under the supervision of a qualified marine archaeologist, using equipment and techniques the Regional Director considers appropriate. You must submit a report documenting the further investigation to the Regional Director for review; or,

(i) if the further investigation cannot establish to the satisfaction of the Regional Director that an archeological resource it is not likely to be present at the operational site, you must demonstrate to the satisfaction of the Regional Director that your operations will not adversely affect the suspected resource; or,

(ii) if, based on the additional archaeological investigation, the Regional Director determines that an archaeological resource is likely to be present in the operational site and may be adversely affected by operations, you must take whatever additional steps are specified by the Regional Director to protect the archaeological resource before you conduct any further operations at the operational site; or,

(3) if the Regional Director determines that an archaeological resource is likely to be present in the lease area, that it is likely to be adversely affected by your operations, and that there are no feasible means to avoid this adverse effect, the Regional Director may prohibit your operations in the APE.

■ 4. Add § 550.195 to read as follows:

§ 550.195 What must I do if I discover a potential archeological resource while conducting operations on the lease or right-of-way area?

(a) If you discover any unanticipated archaeological resource while conducting operations on the lease or right-of-way area, you must immediately halt seafloor disturbing operations within at least 305 meters (1,000 feet) of the area of the discovery and report the discovery to the Regional Director within 72 hours.

(b) If BOEM determines that the resource may be eligible for listing on the National Register of Historic Places in accordance with the applicable regulations, the Regional Director will specify measures you must take to protect the resource during operations and activities.

(c) For activities and operations under BSEE jurisdiction, BOEM will refer the discovery to BSEE to determine if the resource may have been adversely impacted by your operations and activities prior to or during its discovery in paragraph (a) of this section. The Regional Director of BSEE will specify measures you must take to either demonstrate that no adverse impacts have occurred or to document the extent of adverse impacts that have occurred. BSEE may further specify measures you must take to remediate adverse impacts resulting from your operations and activities and will relay to BOEM both the results of its investigation and any further measures it has imposed to remediate the adverse impacts that may have occurred.

[FR Doc. 2023–02903 Filed 2–14–23; 8:45 am]

BILLING CODE 4340–98–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0035; FRL–10594–01–R9]

Finding of Failure To Attain the 1987 24-Hour PM_{10} Standards; Pinal County, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine

that the West Pinal County, Arizona nonattainment area did not attain the 1987 24-hour national ambient air quality standards (NAAQS or ''standards'') for particulate matter with a diameter of 10 micrometers or smaller (PM_{10}) by its December 31, 2022 ''Serious'' area attainment date. This proposal is based on the EPA's calculation of the preliminary PM_{10} design value for the nonattainment area over the 2020–2022 period. If the EPA makes a final determination that West Pinal County has failed to attain the PM_{10} NAAQS by its attainment date, the State will be required to submit a revision to the Arizona state implementation plan (SIP) that, among other elements, provides for expeditious attainment of the PM_{10} standards and for a five percent annual reduction in the emissions of direct PM_{10} or a PM_{10} plan precursor pollutant in the nonattainment area.

DATES: Any comments must arrive by March 17, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0035 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ashley Graham, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3877, *graham.ashleyr@epa.gov.*

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

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I. Background and Regulatory Context

A. The 1987 PM_{10} NAAQS

The EPA sets the NAAQS for certain ambient air pollutants, including particulate matter, at levels required to protect public health and welfare. For a given air pollutant, ''primary'' NAAQS are those determined by the EPA as requisite to protect public health, allowing an adequate margin of safety, and ''secondary'' standards are those determined by the EPA as requisite to protect public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.[1] The EPA revised the primary and secondary NAAQS for particulate matter on July 1, 1987, replacing standards for total suspended particulates with annual and 24-hour standards.[2] An area attains the 24-hour PM_{10} primary and secondary standards of 150 micrograms per cubic meter (μg/m^3) when the expected number of days per calendar year with a 24-hour concentration exceeding the standards (referred to as an ''exceedance'') over a three-year period is equal to or less than one.[3] The annual PM_{10} standards were revoked on October 17, 2006.[4] Therefore, we refer herein to the 1987 24-hour PM_{10} standards as the ''PM_{10} NAAQS.''

B. History of the West Pinal County Nonattainment Area

On May 31, 2012, the EPA designated a portion of state lands in Pinal County, Arizona (''West Pinal County'') as nonattainment for the 1987 PM_{10} NAAQS based on 2006–2008 data.[5] As a result of the nonattainment designation, West Pinal County was classified as a ''Moderate'' PM_{10} nonattainment area with an attainment date of as expeditiously as practicable, but no later than December 31, 2018. The Arizona Department of Environmental Quality (ADEQ) submitted a SIP revision intended to meet Moderate PM_{10} nonattainment requirements on December 21, 2015 (''2015 West Pinal Plan'').

On June 24, 2020, the EPA determined that West Pinal County did not attain the 1987 PM_{10} NAAQS by December 31, 2018.[6] Pursuant to 188(b)(2), the area was reclassified to ''Serious'' nonattainment with an attainment date of as expeditiously as practicable, but no later than December 31, 2022.[7]

On January 8, 2021, the EPA proposed to disapprove the 2015 West Pinal Plan.[8] In response to the EPA's January 8, 2021 proposal, on May 17, 2021, ADEQ withdrew the 2015 West Pinal Plan, with the exception of several rules and statutes that had been approved into the SIP in 2017.[9] Consequently, the EPA did not finalize the actions proposed on January 8, 2021, with respect to the Moderate area plan requirements. Instead, on July 23, 2021, the EPA found that Arizona had failed to submit a plan to address these requirements.[10]

On May 31, 2022, ADEQ adopted and submitted the ''2022 Serious Area Particulate Plan for PM–10 for the West Pinal County Nonattainment Area'' (''2022 West Pinal Plan'' or ''Plan''),[11] as

[1] CAA section 109(b).

[2] 52 FR 24634.

[3] An exceedance is defined as a daily value that is above the level of the 24-hour standards, 150 μg/m^3, after rounding to the nearest 10 μg/m^3 (*i.e.,* values ending in five or greater are to be rounded up). Consequently, a recorded value of 154 μg/m^3 would not be an exceedance because it would be rounded to 150 μg/m^3; whereas, a recorded value of 155 μg/m^3 would be an exceedance because it would be rounded to 160 μg/m^3. See 40 CFR 50.6 and 40 CFR part 50, Appendix K, section 1.0.

[4] 71 FR 61144.

[5] 77 FR 32024. The boundaries for the West Pinal County PM_{10} nonattainment area are described in 40 CFR 81.303.

[6] 85 FR 37756.

[7] Id.

[8] 86 FR 1347.

[9] Letter dated May 17, 2021, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Deborah Jordan, Acting Regional Administrator, EPA Region IX, Subject: ''RE: Withdrawal from EPA Consideration of the *2015 Arizona State Implementation Plan Revision: West Pinal County PM$_{10}$ Nonattainment Area*.''

[10] 86 FR 38928.

[11] West Pinal PM_{10} Plan, Appendix E, Exhibit 2, Resolution to Adopt the 2022 Serious Area Particulate Plan for PM–10 for the West Pinal County Nonattainment Area.

a revision to the Arizona SIP.[12] In addition to addressing the Moderate and Serious area plan requirements, the 2022 West Pinal Plan included a request for an extension of the December 31, 2022 attainment date pursuant to Clean Air Act (CAA) section 188(e). On November 30, 2022, the EPA issued a letter finding the 2022 West Pinal Plan complete under CAA section 110(k).[13] However, the EPA has not approved the Plan or the attainment date extension request. Therefore, the maximum Serious area attainment date for West Pinal County remains December 31, 2022.

II. Proposed Determination and Associated Rationale

A. Applicable Statutory and Regulatory Provisions

Sections 179(c)(1) and 188(b)(2) of the CAA require the EPA to determine whether a PM_{10} nonattainment area attained by the applicable attainment date, based on the area's air quality ''as of the attainment date.'' Generally, this determination of whether an area's air quality meets the PM_{10} standards is based upon the most recent three years of complete, certified data gathered at eligible monitoring sites in accordance with 40 CFR part 58.[14] The requirements of 40 CFR part 58 include quality assurance procedures for monitor operation and data handling, siting parameters for instruments or instrument probes, and minimum ambient air quality monitoring network requirements. State, local, or tribal agencies operating air monitoring sites, in accordance with 40 CFR part 58, must enter the ambient air quality data and associated quality assurance data from these sites into the EPA's Air Quality System (AQS) database.[15] These monitoring agencies certify annually that these data are accurate to the best of their knowledge, taking into consideration the quality assurance findings.[16] Accordingly, the EPA relies primarily on AQS data when determining the attainment status of an area. In determining whether data are suitable for regulatory determinations, the EPA uses a ''weight of evidence'' approach, considering the requirements of 40 CFR part 58, Appendix A, and other documentation demonstrating overall compliance with part 58.[17]

Ambient air quality data must generally meet data completeness requirements for each year under consideration. The completeness requirements are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.[18] The data requirements for showing that a monitor has failed an attainment test, and thus recorded a violation of the PM_{10} standards, are less stringent and the 75 percent data capture requirement does not apply provided there are sufficient data to unambiguously establish nonattainment of the standards.[19]

Ambient air quality data that meet the applicable requirements are used to calculate design values, which can be compared to the NAAQS. The expected number of exceedances averaged over a three-year period at any given monitor is known as the PM_{10} design value for that site. The PM_{10} design value for the nonattainment area is the highest design value from a monitor within that area. The methodologies for calculating expected exceedances for the PM_{10} NAAQS are found in 40 CFR part 50, Appendix K, section 2.1(a).

B. Monitoring Network Review, Quality Assurance, and Data Completeness

The Pinal County Air Quality Control District (''Pinal County'') is the governmental agency with the authority and responsibilities under the State's laws for collecting ambient air quality data for West Pinal County. Pinal County submits annual monitoring network plans to the EPA.[20] These plans discuss the status of the ambient air monitoring network, as required under 40 CFR part 58. The EPA reviews these annual network plans for compliance with specific requirements in 40 CFR part 58. With respect to PM_{10}, the EPA has found that the annual network plans submitted by Pinal County meet these requirements, including minimum monitoring requirements.[21]

In accordance with 40 CFR 58.15, Pinal County certifies annually that the previous year's ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate, taking into consideration the quality assurance findings.[22] Along with the certification letters, Pinal County submits a summary of the precision and accuracy data for all ambient air quality data.[23] The deadlines for submission of quarter 4 (October through December) data and certification of the 2022 data have not yet passed and these data have not yet been submitted and certified. The 2022 data are therefore considered incomplete and preliminary at the time of this proposal. However, we do not expect the final certified data to differ significantly from the data reflected in this proposal. Moreover, even if the 2022 data were to differ significantly from the preliminary data, the end result would be the same, as explained further in section II.C of this proposal.

The EPA AQS Design Value Report includes a validity indicator that reflects whether the design value is valid (*i.e.,* calculated using data that meet the applicable completeness criteria). For the purposes of this proposal, we reviewed the data for the 2020–2022 period for completeness and determined that, with the exception of the 2022 quarter 4 data that have not yet been submitted to AQS, the PM_{10} data collected by Pinal County meet the 75 percent completeness criterion at the relevant monitoring sites.

Finally, the EPA conducts regular technical systems audits (TSAs) where we review and inspect state and local ambient air monitoring programs to assess compliance with applicable regulations concerning the collection, analysis, validation, and reporting of ambient air quality data. For the purposes of this proposal, we reviewed the findings from the EPA's 2019 TSA of Pinal County's ambient air monitoring program.[24] None of the findings from the 2019 TSA were cause for invalidation of any data from the relevant monitors.[25]

[12] Letter dated May 31, 2022, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Martha Guzman, Regional Administrator, EPA Region IX, Subject: ''Arizona State Implementation Plan Revision, Maricopa Association of Governments 2022 Serious Area Particulate Plan for PM–10 for the West Pinal County Nonattainment Area.''

[13] Letter dated November 30, 2022, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Misael Cabrera, Director, ADEQ, Subject: ''Completeness Finding for State Implementation Plan (SIP) Submission for West Pinal County for the 1987 PM_{10} National Ambient Air Quality Standards (NAAQS) and Termination of Clean Air Act (CAA) Sanctions Clocks.''

[14] 40 CFR part 50, Appendix K, section 2.3(a).

[15] 40 CFR 58.16. AQS is the EPA's national repository of ambient air quality data.

[16] 40 CFR 58.15(a).

[17] 40 CFR part 58, Appendix A, section 1.2.3.

[18] 40 CFR part 50, Appendix K, section 2.3.

[19] 40 CFR part 50, Appendix K, section 2.3(a).

[20] We have included Pinal County's annual monitoring network plans for the relevant years in the docket for this action.

[21] We have included the EPA's letters acting on Pinal County's annual monitoring network plans in the docket for this action.

[22] We have included Pinal County's annual data certifications for 2020 and 2021 in the docket for this action.

[23] See 40 CFR 58.15(c).

[24] EPA Region IX, Technical Systems Audit of the Ambient Air Monitoring Program: Pinal County Air Quality Control District, April 1–3, 2019 (Final Report dated September 2019).

[25] Id. We note that in September 2022, the EPA conducted a subsequent TSA for Pinal County. We have not yet completed the report summarizing the findings from the September 2022 TSA; however, based on our preliminary review, none of the findings would affect our proposed determination herein that the West Pinal County area did not

In summary, based on the relevant monitoring network plans, certifications, and 2019 TSA, we propose to find that the PM_{10} data collected at the West Pinal monitoring sites are suitable for determining whether West Pinal County attained the PM_{10} NAAQS by the applicable attainment date.

C. The EPA's Evaluation of Attainment

Table 1 provides the estimated number of PM_{10} exceedances in each of the years 2020–2022, and preliminary 2022 p.m.$_{10}$ design values expressed as a single value representing the average expected exceedances over the three-year period, 2020–2022, for all regulatory monitoring sites measuring PM_{10} within West Pinal County. As discussed in section II.B, 2022 quarter 4 data are not yet available in AQS; thus, those data are not reflected in the table. The PM_{10} data show that the design values at multiple monitoring sites are greater than 1.0 estimated annual average exceedance of the 1987 24-hour PM_{10} NAAQS. Moreover, while preliminary 2022 data in AQS indicate exceedances at several sites (as shown in Table 1), even if there were zero exceedances in 2022, the 2020–2022 design value would exceed 1.0 at multiple monitoring sites. Consequently, the EPA proposes to determine, based upon complete and quality-assured 2020 and 2021 data and preliminary 2022 data, that West Pinal County did not attain the 1987 24-hour PM_{10} NAAQS by the applicable attainment date of December 31, 2022.

TABLE 1—2020–2022 PM_{10} ESTIMATED EXCEEDANCES FOR THE WEST PINAL NONATTAINMENT AREA

Monitoring site	AQS site ID #	PM_{10} estimated exceedances			
		2020	2021	2022*	2020–2022*
Casa Grande Downtown	04–021–0001–3	1.2	2	0	1.1
Stanfield	04–021–3008–3	4	4	2	3.3
Combs	04–021–3009–3	0	1	0	0.3
Pinal County Housing (aka Eleven Mile Corner)	04–021–3011–3	1	3	0	1.3
Eloy	04–021–3014–3	2.2	3	0	1.7
Hidden Valley	04–021–3015–3	59.6	24	14.1	32.6
Maricopa 1405	04–021–3016–3	3	2	1	2

Source: EPA AQS Design Value Report, AMP 480, dated January 5, 2023. (User ID: JCARLSTAD, Report Request ID: 2069517).

*PM_{10} estimated exceedances for 2022 reflect quarters 1–3 (*i.e.,* January–September) only. The deadline for submitting 2022 quarter 4 data to AQS is March 31, 2023. Thus, at the time this proposal was being developed, the deadline for submitting quarter 4 (October–December) data had not yet passed and these data had not yet been submitted to AQS.

III. Consequences for a Serious PM_{10} Nonattainment Area Failing To Attain the Standards by the Attainment Date

The consequences for a Serious PM^{10} nonattainment area for failing to attain the standards by the applicable attainment date are set forth in CAA sections 179(d) and 189(d). Under section 179(d), a state must submit a SIP revision for the area meeting the requirements of CAA sections 110 and 172, the latter of which requires, among other elements, a demonstration of attainment and reasonable further progress, and contingency measures. CAA section 189(d) requires that the SIP revision must provide for attainment of the standards and, from the date of the SIP submittal until attainment, for an annual reduction in the emissions of PM_{10} or a PM_{10} precursor pollutant within the area of not less than five percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

The requirement for a new attainment demonstration under CAA section 189(d) also triggers the requirement for the SIP revision for quantitative milestones under section 189(c) that are to be achieved every three years until redesignation to attainment.

In addition, because the EPA has not yet approved a Moderate or Serious area attainment plan for West Pinal County, the Moderate and Serious area requirements also remain outstanding. The EPA anticipates that Arizona's submission of an approvable Serious area and 189(d) nonattainment plan would also satisfy the State's Moderate area nonattainment plan obligations. For example, an approvable Serious area nonattainment plan would satisfy the Act's requirements for imposing best available control measures, including best available control technology, which would presumably satisfy the less stringent Moderate area requirements for reasonably available control measures, including reasonably available control technology.

The new attainment date is set by CAA section 179(d)(3), which relies upon section 172(a)(2) to establish a new attainment date but with a different starting point than provided in section 172(a)(2). Under section 179(d)(3), the new attainment date is the date by which attainment can be achieved as expeditiously as practicable, but no later than five years from the date of the final determination of failure to attain, except that the EPA may extend the attainment date for a period no greater than 10 years from the final determination, considering the severity of nonattainment and the availability and feasibility of pollution control measures. Lastly, section 189(d) requires that the state submit the required SIP revision within 12 months after the applicable attainment date. In this case, if the EPA finalizes this proposed rule, then the State of Arizona will be required to submit a SIP revision that complies with sections 179(d) and 189(d) within 12 months of December 31, 2022, *i.e.,* by December 31, 2023.

IV. Summary of Our Proposed Action

In accordance with sections 179(c)(1) and 188(b)(2) of the CAA, the EPA is proposing to determine that West Pinal County did not attain the 1987 24-hour PM_{10} NAAQS by the applicable Serious area attainment date of December 31, 2022. Our proposed determination that West Pinal County failed to attain the PM_{10} NAAQS is based on complete and quality-assured 2020 and 2021 data and preliminary 2022 data. We are soliciting comment on this proposed finding.

If we finalize our action as proposed, Arizona will be required under CAA sections 179(d) and 189(d) to submit a revision to the SIP for West Pinal County that, among other elements,

attain by the December 31, 2022 Serious area attainment date.

demonstrates expeditious attainment of the standards within the time period provided under CAA section 179(d), and that provides for an annual reduction in the emissions of PM_{10} or a PM_{10} precursor pollutant within the area of not less than five percent until attainment. The SIP revision required under CAA sections 179(d) and 189(d) would be due for submittal to the EPA no later than December 31, 2023.

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal until March 17, 2023 and will consider comments before taking final action.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and therefore was 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 provisions of 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. This proposed action, if finalized, would require the State to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more, as described in UMRA (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action proposes to determine that West Pinal County failed to attain the NAAQS by the applicable attainment date. If finalized, this determination would trigger existing statutory timeframes for the State to submit a SIP revision. Such a determination in and of itself does not impose any federal intergovernmental mandate.

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. As there are no federally recognized tribes within West Pinal County,[26] the proposed finding of failure to attain the PM_{10} NAAQS does not apply to tribal areas, and the proposed rule would not impose a burden on Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within West Pinal County. Thus, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because the effect of this proposed action, if finalized, would be to trigger additional planning requirements under the CAA. This proposed action does not establish an environmental standard intended to mitigate health or safety risks.

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

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

[26] Map of Federally-Recognized Tribes in EPA's Pacific Southwest (Region IX) is available at *https://www.epa.gov/tribal-pacific-sw/map-federally-recognized-tribes-epas-pacific-southwest-region-9.*

I. National Technology Transfer and Advancement Act (NTTAA)

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 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. There is no information in the record indicating that this action would be inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 9, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–03198 Filed 2–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0059; FRL–10645–01–R9]

Air Plan Limited Approval and Limited Disapproval; California; Eastern Kern Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Eastern Kern Air Pollution Control District (EKAPCD or ''District'') portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) from Portland cement

kilns. We are proposing a limited approval of a local rule to regulate these emissions sources under the Clean Air Act (CAA) because the rule would strengthen the current SIP-approved version of the EKAPCD's Portland cement kiln rule. We are proposing a limited disapproval of this revision due to the presence of exemptions for periods of startup, shutdown, and malfunction (breakdown), which are inconsistent with CAA requirements. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before March 17, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0059 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Elijah Gordon, EPA Region IX, 75 Hawthorne St. (AIR–3–3), San Francisco, CA 94105. By phone: (415) 972–3158 or by email at *gordon.elijah@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED DOCUMENTS

Local agency	Rule No.	Title	Adopted	Submitted
EKAPCD	Rule 425.3 ...	Portland Cement Kilns (Oxides of Nitrogen)	03/08/2018	08/22/2018

Pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51 Appendix V, the EPA determined that the submittal for EKAPCD Rule 425.3 met the completeness criteria on February 11, 2019.

B. Are there other versions of this rule?

We approved an earlier version of Rule 425.3 into the SIP on July 20, 1999 (64 FR 38832). The EKAPCD adopted revisions to the SIP-approved version on March 8, 2018, and CARB submitted them to us on August 22, 2018.

C. What is the purpose of the submitted rule revision?

Emissions of NO_X contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit plans that provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). In addition, sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement Reasonable Available Control Technology (RACT) for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of volatile organic compounds (VOCs) or NO_X. The EKAPCD is subject to these requirements as it regulates the Eastern Kern ozone nonattainment area that was designated and classified as Moderate at the time of their RACT SIP submittal for the 2008 8-hour ozone NAAQS (''2017 RACT SIP'').[1] Therefore, the EKAPCD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major sources of VOCs or NO_X within the District. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or NO_X in a Moderate ozone nonattainment area is considered a major stationary source. We have acted on, and approved, all required elements that must be covered by a RACT SIP except for non-CTG major NO_X sources.[2]

In their 2017 RACT SIP, the EKAPCD concluded that the earlier SIP-approved Rule 425.3, which establishes NO_X emission limits for Portland cement kilns within the District, was one of three rules that did not currently meet RACT for non-CTG major sources of NO_X and acknowledged the need to revise the rule, primarily the emission limits for NO_X (11.6 pounds per ton of clinker produced when averaged over any 24 consecutive hour period and 6.4 pounds per ton of clinker produced when averaged over any 30 consecutive day period). In response, the District has amended Rule 425.3 in an effort to correct RACT deficiencies and fulfill their 2017 RACT SIP demonstration requirements for non-CTG major sources of NO_X for the 2008 8-hour ozone NAAQS. The submitted rule revisions consist of more stringent NO_X emission limits, new emission monitoring requirements, and several recordkeeping requirements. The EPA's technical

[1] The EPA has since reclassified the Eastern Kern ozone nonattainment area to Serious on July 5, 2018 (83 FR 31334) and Severe–15 on June 7, 2021 (86 FR 30204).

[2] 86 FR 3816, 86 FR 60771.

support document (TSD) has more information about these rule revisions.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)).

Generally, ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)) are required to submit SIP revisions that implement RACT-level controls for certain source categories, including for each non-CTG major source of NO_X. At the time of its 2017 RACT SIP submittal, the EKAPCD regulated an ozone nonattainment area classified as ''Moderate'' for the 2008 8-hour ozone NAAQS, and is therefore required to demonstrate RACT-level controls for that ozone standard. EKAPCD revised Rule 425.3 to implement RACT-level controls to fulfill the requirements associated with the non-CTG major source NO_X element for the 2008 8-hour ozone NAAQS.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
5. ''NO_X Emissions from Cement Manufacturing,'' EPA–453/R–94–004, March 1994.
6. ''NO_X Control Technologies for the Cement Industry: Final Report,'' EPA 457/R–00–002, September 2000.
7. The Texas Commission on Environmental Quality in Section 117.3110—Cement Kilns, Emissions Specifications, May 23, 2007.
8. ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction'' (80 FR 33839), June 12, 2015.
9. ''Guidance Memorandum: Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' September 30, 2021.

B. Does the rule meet the evaluation criteria?

Rule 425.3 establishes more stringent emission limits for NO_X and strengthens monitoring, recordkeeping, and reporting requirements. As a result, the EPA is proposing that the District's submitted rule revision strengthens the SIP. Under Rule 425.3, NO_X emission limits outside of periods of startup, shutdown, and breakdown (malfunction) are reduced from 6.4 to 2.8 (or 3.4 for low-NO_X burner or low-NO_X precalciner) pounds per ton of clinker produced when averaged over any 30 consecutive day period.

To evaluate the stringency of this NO_X emission limit, the EPA examined cement kiln rules in other states and districts. As outlined in further detail in the TSD available in the docket, based upon our comparison to other approved rules regulating Portland cement kilns (*e.g.,* 30 TAC Chapter 117 (74 FR 1927) in Texas, which includes a 2.8 lb/ton limit on a 30-day rolling average for preheater-precalciner kilns), as well as the District's cost analysis, we consider the revised 2.8 lb/ton NO_X limit to implement RACT-level stringency for periods of operation during which it applies. Additionally, provisions clearly laid out in Sections (V)(B), (V)(C), (VI)(A), (VI)(B), and (VI)(C) establish applicability criteria, monitoring, recordkeeping, and reporting that can be evaluated to determine compliance. Finally, the retention of all produced and maintained on-site records increased from 24 months to 60 months. These SIP strengthening revisions to Rule 425.3 are discussed in greater detail within the TSD. However, the EPA is also proposing that certain provisions of revised Rule 425.3 do not meet our evaluation criteria and prevent full approval of the rule into the SIP. These rule deficiencies are summarized below and discussed further in the TSD.

C. What are the proposed rule deficiencies?

The EPA is proposing to determine that the following provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision, for reasons described here and explained in further detail in the TSD.

1. CAA § 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques as necessary to meet CAA requirements. The term ''emission limitation'' is defined in CAA § 302(k) as a requirement that ''limits the quantity, rate, or concentration of emissions of air pollution on a continuous basis [. . .].'' An emission limitation or requirement that exempts a period of source operation, such as startup, cannot be considered continuous and is not consistent with CAA requirements.

Section (IV)(A) of the rule contains an exemption to an otherwise applicable emission limitation for periods of startup and shutdown, stating that ''the requirements of Section V of this Rule shall not apply [. . .] to startup and shutdown as defined'' in Sections (III)(J) and (III)(K). Although the rule revision contains individual startup (48 hours) and shutdown (36 hours) time limits in Sections (III)(J) and (III)(K), along with SSM recordkeeping requirements in Section (VI)(B)(4), these provisions are not sufficient to establish an emission limit that could be considered adequate for CAA purposes. Elimination of the existing startup and shutdown exemption to address the concerns raised in the EPA's evaluation is necessary for full approval of the rule into the SIP.

2. Section (IV)(B) contains an exemption for breakdown conditions from the emission limit, emission monitoring, and production monitoring requirements found in Section (V). Similar to the first deficiency noted above, an emission limitation or requirement that exempts a period of source operation cannot be considered adequate for CAA purposes. Removal of this exemption for breakdown conditions is necessary for full approval of the rule into the SIP.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted rule due to the deficiencies identified above. We will accept comments from the public on this proposal until March 17, 2023. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is

simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If we finalize this limited disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months of the effective date of our final action unless we approve a subsequent SIP revision that corrects the deficiencies identified in our evaluation (*i.e.,* as stated previously, a SIP revision that eliminates the existing startup, shutdown, and breakdown exemptions to address the deficiencies identified in the EPA's limited disapproval). In addition, finalizing this limited disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final limited disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

Note that the submitted rule has been adopted by the EKAPCD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf.*

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference EKAPCD Rule 425.3, ''Portland Cement Kilns (Oxides of Nitrogen),'' amended on March 8, 2018, which regulates NO_X emissions from the operation of cement kilns. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 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 this action does not impose additional requirements beyond those imposed by state law.

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 beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

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: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: February 9, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–03197 Filed 2–14–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 424 and 455

[CMS–6084–P]

RIN 0938–AU90

Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement portions of section 6101 of the Patient Protection and Affordable Care Act (Affordable Care Act), which require the disclosure of certain ownership, managerial, and other information regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities.

DATES: *Comment period:* To be assured consideration, comments must be received at one of the addresses provided below, by April 14, 2023.

ADDRESSES: In commenting, please refer to file code CMS–6084–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6084–P, P.O. Box 8010, Baltimore, MD 21244–1810.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6084–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302 or via email at *Frank.Whelan@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Executive Summary and Background

A. Executive Summary

1. Purpose

Section 6101(a) of the Affordable Care Act (Pub. L. 111–148) added a new section 1124(c) to the Social Security Act (the Act). This provision established requirements for the disclosure of information about the owners and operators of Medicare SNFs and Medicaid nursing facilities. (Except as otherwise indicated, these Medicare and Medicaid providers will be collectively referenced as ''nursing facilities,'' ''nursing homes,'' or simply ''facilities''.)

We included provisions to implement section 1124(c) of the Act as part of the May 6, 2011 proposed rule titled ''Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Disclosures of Ownership and Additional Disclosable Parties Information'' (76 FR 26364). We did not finalize these proposed disclosure provisions in the subsequent final rule, published on August 8, 2011,[1] due to the need for more time to consider the comments received, though we stated that we would address our provisions in a separate final rule in early 2012. After reviewing the comments, we did not publish a final rule or finalize our proposals.

As explained in detail in the present proposed rule, however, we have recently received information regarding particular categories of nursing facility owners (including, but not limited to, private equity companies and real estate investment trusts) that has generated concerns about the standard of care that nursing facility residents receive. To help ensure that CMS has sufficient data on these owners and can thus better monitor and hold accountable their nursing facilities, we are again proposing to implement section 1124(c) of the Act, albeit with isolated exceptions as explained in section II.C. of this proposed rule.

2. Summary of the Major Provisions

There are three principal categories of provisions in this proposed rule.

a. Data To Be Reported

We are proposing that nursing facilities would be required to disclose the following information to CMS or, for Medicaid nursing facilities, the applicable state Medicaid agency:

- Each member of the governing body of the facility, including the name, title, and period of service of each member.
- Each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility, including the name, title, and period of service of each such person or entity.
- Each person or entity who is an additional disclosable party of the facility.
- The organizational structure of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

To the extent that a Medicare SNF must already report some of this data via the Form CMS–855A provider enrollment application (Medicare Enrollment Application—Institutional Providers; Office of Management and Budget (OMB) Control No.: 0938–0685), we are proposing that the SNF need not report the same data required under section 1124(c) of Act more than once on the same application submission. (States would have the option of adopting a similar policy with respect to the required Medicaid nursing facility data.) We believe this would help prevent unnecessary burden on the facility.

We also intend to make the information provided per section 1124(c) of the Act publicly available as required under section 6101(b) of the Affordable Care Act.

b. Timing of Reporting

We are proposing that the nursing facility would have to report the

[1] ''Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012; Final Rule'' (76 FR 48485).

aforementioned information upon initially enrolling in Medicare or Medicaid and when revalidating their Medicare or Medicaid enrollment. Moreover, a Medicare SNF, once enrolled, would be required to disclose any changes to this information within the current timeframes specified in § 424.516(e) for reporting changes in enrollment data.

Consistent with 42 CFR 424.515, SNFs are required to revalidate their Medicare enrollment every 5 years. However, CMS under § 424.515(d) can perform off-cycle revalidations; that is, we can revalidate a provider or supplier at any time and need not wait until the arrival of their 5-year revalidation cycle. Should this proposed rule be finalized, CMS would accordingly reserve the right to conduct off-cycle revalidations of SNFs to collect the data required under section 1124(c) of the Act.

c. Definitions

To explain some of the terminology associated with these reporting requirements, we are also proposing several new definitions. These include, but are not limited to, private equity company, real estate investment trust, additional disclosable party, and organizational structure.

d. Effective Date

If finalized, the rule would become effective 60 days after the date the final rule is published in the **Federal Register**. However, Medicare SNFs would not have to disclose the data required under section 1124(c) of the Act until the Form CMS–855A is revised (a process CMS would seek to undertake promptly upon the publication of any final rule) to collect this data and is publicly available for use. For Medicaid nursing facilities, the required data would not have to be reported until the applicable State Medicaid agency has established the means to collect it.

3. Summary of Costs and Benefits

Sections III. and IV. of this proposed rule outline the impacts that our proposals would have on affected entities and beneficiaries. The principal impact would involve the disclosure of the required data by nursing facilities. As explained in section IV. of this proposed rule, we project a total annual information collection burden on Medicare and Medicaid nursing facilities in reporting this data of 18,912 hours at a cost of $1,733,096.

We have determined that this proposed rule is not economically significant. See section IV. of this proposed rule for a detailed discussion.

B. Legislative and Regulatory Authority

There are three principal categories of legal authorities for our proposals:

- Section 1124(c) of the Act requires Medicare and Medicaid nursing facilities to disclose certain information about their ownership and management.
- Section 1866(j) of the Act furnishes specific authority regarding the enrollment process for providers and suppliers.
- Sections 1102 and 1871 of the Act provide general authority for the Secretary to prescribe regulations for the efficient administration of the Medicare program.

C. Overview of Provider Enrollment

1. Medicare

Section 1866(j)(1)(A) of the Act requires the Secretary to establish a process for the enrollment of providers and suppliers into the Medicare program. The overarching purpose of the enrollment process is to confirm that providers and suppliers seeking to bill Medicare for services and items furnished to Medicare beneficiaries meet all applicable Federal and State requirements to do so. The process is, to an extent, a ''gatekeeper'' that prevents unqualified and potentially fraudulent individuals and entities from entering and inappropriately billing Medicare. Since 2006, we have undertaken rulemaking efforts to outline our enrollment procedures. These regulations are generally codified in 42 CFR part 424, subpart P (hereafter occasionally referenced as simply ''subpart P''). They address, among other things, requirements that providers and suppliers must meet to obtain and maintain Medicare billing privileges.

As outlined in § 424.510, one such requirement is that the provider or supplier complete, sign, and submit to its assigned Medicare Administrative Contractor (MAC) the appropriate enrollment form, typically the Form CMS–855 (OMB Control No. 0938–0685). The Form CMS–855 collects important information about the provider or supplier. Such data includes, but is not limited to, general identifying information (for example, legal business name), licensure and/or certification data, and practice locations. The application is used for a variety of provider enrollment transactions, including the following:

- Initial enrollment—The provider or supplier is—(1) enrolling in Medicare for the first time; (2) enrolling in another Medicare contractor's jurisdiction; or (3) seeking to enroll in Medicare after having previously been enrolled.
- Change of ownership—The provider or supplier is reporting a change in its ownership.
- Revalidation—The provider or supplier is revalidating its Medicare enrollment information in accordance with § 424.515.
- Reactivation—The provider or supplier is seeking to reactivate its Medicare billing privileges after it was deactivated in accordance with § 424.540.
- Change of information—The provider or supplier is reporting a change in its existing enrollment information in accordance with § 424.516.

After receiving the provider's or supplier's initial enrollment application, CMS or the MAC reviews and confirms the information thereon and determines whether the provider or supplier meets all applicable Medicare requirements. We believe this screening process has greatly assisted CMS in executing its responsibility to prevent Medicare fraud, waste, and abuse.

As previously mentioned, over the years we have issued various final rules pertaining to provider enrollment. These rules were intended not only to clarify or strengthen certain components of the enrollment process but also to enable us to take further action against providers and suppliers: (1) engaging (or potentially engaging) in fraudulent or abusive behavior; (2) presenting a risk of harm to Medicare beneficiaries or the Medicare Trust Funds; or (3) that are otherwise unqualified to furnish Medicare services or items.

2. Medicaid

States have considerable flexibility in how they administer their Medicaid programs within a broad Federal framework, and programs vary from state to state. In operating Medicaid, states historically have permitted the enrollment of providers who meet the state requirements for program enrollment as well as any applicable Federal requirements. State enrollment requirements must be consistent with section 1902(a)(23) of the Act and implementing regulations at § 431.51.

Part 455 of title 42 includes Federal Medicaid provider enrollment requirements to which states must adhere. These include, but are not limited to, the following:

- Requiring providers to disclose information regarding ownership, business transactions, certain criminal convictions, and affiliations (§§ 455.104 through 455.107).
- Screening providers consistent with the procedures in part 455, subpart E (§ 455.410).

• Revalidating a provider's enrollment at least every 5 years (§ 455.414).

• Performing site visits and criminal background checks in certain circumstances (§§ 455.432 and 455.434).

Although required to comply with the foregoing Federal requirements, states have the discretion to, for instance: (1) undertake stricter screening of providers; and (2) require providers to submit data beyond that identified in §§ 455.104 through 455.107. Except as otherwise noted therein, the provisions in 42 CFR part 455 are thus the minimum requirements for states, not the maximum.

II. Provisions of the Proposed Regulations

A. Background

1. Statutory and Regulatory History

Section 6101(a) of the Affordable Care Act added a new section 1124(c) to the Act. It established requirements for the disclosure of information about nursing facility ownership and oversight. Under section 1124(c)(2)(A)(ii) of the Act, a nursing facility enrolling or enrolled in Medicare or Medicaid must disclose—

• The name, title, and period of service of each member of the facility's governing body;

• The name, title, and period of service of each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility; and

• Each person or entity who is an additional disclosable party of the facility.

Section 1124(c)(5)(A) of the Act defines ''additional disclosable party'' as a person or entity that—

• Exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the facility's operations, or provides financial or cash management services to the facility;

• Leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or

• Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

In addition, section 1124(c)(2)(A)(iii) of the Act requires the nursing facility to disclose: (1) the organizational structure (as defined in section 1124(c)(5)(D) of the Act) of each additional disclosable party of the facility; and (2) a description of the relationship of each such additional disclosable party to the facility and to one another.

As noted previously, we proposed regulations to implement section 1124(c) of the Act as part of a proposed rule published on May 6, 2011. We also proposed therein several regulatory definitions of section 1124(c)'s terminology to help nursing facilities understand what must be reported. We did not finalize our proposed provisions in the subsequent August 8, 2011 final rule because we needed more time to consider the comments received, though we stated that we would address our provisions in a separate final rule in early 2012. After reviewing the comments, we decided not to publish a final rule or to finalize our proposals.

2. Concerns About Nursing Facility Ownership

CMS's concerns about the quality of care and operations of nursing facilities, including (though by no means exclusively) those owned by private equity and other types of investment firms, have increased since 2011. As of 2021, roughly 70 percent of nursing homes were for-profit facilities; this includes those owned by private equity companies, which comprised approximately 11 percent of all nursing homes (although estimates vary).[2] Reports have circulated that nursing facility quality has declined under private equity and similar owners. For instance, in February 2021 the National Bureau of Economic Research (NBER) published an analysis titled ''Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes.'' The report stated: ''Our estimates show that private equity (PE) ownership increases the short-term mortality of Medicare patients by 10%, implying 20,150 lives lost due to PE ownership over our twelve-year sample period. This is accompanied by declines in other measures of patient well-being, such as lower mobility, while taxpayer spending per patient episode increases by 11%.'' [3] A November 2021 analysis published in the *Journal of the American Medical Association* contained similar findings concerning private equity-owned nursing facilities. Titled ''Association of Private Equity Investment in US Nursing Homes with the Quality and Cost of Care for Long-Stay Residents,'' the report stated that private equity companies seek annual returns of 20% or more; with this pressure to generate high short-term profits, private-equity-owned nursing homes might reduce staffing, services, supplies, or equipment, which could adversely affect quality of care.[4] The analysis concluded that: (1) private equity acquisition of nursing facilities was associated with higher costs and increases in emergency department visits and hospitalizations for ambulatory sensitive conditions; and (2) per the study's findings, more stringent oversight and reporting on private equity ownership of nursing homes may be warranted.[5]

The Biden-Harris Administration's concerns about nursing facility quality of care and private equity-ownership led to its announcement on February 28, 2022, of a series of initiatives designed to improve care and accountability at such facilities. In its fact sheet titled ''Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes,'' the White House stated that ''(f)or too long, corporate owners and operators have not been held to account for poor nursing home performance.'' [6] The fact sheet also stated that CMS would ''implement Affordable Care Act requirements regarding transparency in corporate ownership of'' nursing facilities, including the ''collect[ion] and public reporting [of] more robust corporate ownership and operating data.'' [7]

We stress that the above-mentioned concerns about nursing home ownership are not limited to private equity companies. Other types of private ownership, such as real estate investment trusts (REITs), have generated similar concerns; indeed, REITs, in addition to private equity companies and other investment ownership structures, were specifically referenced in the February 28, 2022 White House fact sheet.

We note that Government oversight bodies, too, have studied the issue of nursing facility quality across the board, regardless of the precise type of ownership involved. The Government Accountability Office (GAO) published an analysis on January 14, 2022 titled ''Health Care Capsule: Improving Nursing Home Quality and Information''

[2] Medicare Payment Advisory Commission, ''Congressional Request: Private Equity and Medicare,'' June 2021. *jun21_ch3_medpac_report_to_congress_sec.pdf.*

[3] Atul Gupta, Sabrina T. Howell, Constantine Yannelis, and Abhinav Gupta, *Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes,* 2021, p. i.

[4] Robert Tyler Braun, Hye-Young Jung, Lawrence Casalino, et al., JAMA Health Forum, November 19, 2021.

[5] Ibid.

[6] *https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.*

[7] Ibid.

(GAO–22–105422). This document summarized past GAO reports that expressed continued concern about the level of care that SNF beneficiaries receive. Problems that the GAO cited in this analysis and in prior studies (based in part on CMS statistics regarding nursing facility deficiencies) included infection prevention and control, ensuring that the nursing home environment is free from accidents, and food safety.[8] In a September 2020 report titled ''National Background Check Program for Long-Term Care Providers: Assessment of State Programs Concluded in 2019'' (OEI–07–20–00180), the U.S. Department of Health & Human Services Office of Inspector General (OIG) noted that patient abuse, patient neglect, and misappropriation of property have been identified as widespread problems harming beneficiaries receiving long-term care. Of particular significance was the OIG's statement that, per various studies, some nurse aides who were convicted of abuse, neglect, or theft had previous criminal convictions that could have been found through background checks.[9] The OIG added that such background checks can help protect long-term care beneficiaries.[10]

These two reports further emphasize the importance of CMS' efforts to: (1) improve the quality of care provided in nursing facilities; and (2) facilitate greater transparency regarding nursing facilities' owners and operators, whether they be private equity companies, REITs, or otherwise. We believe nursing home owners and operators are in a position to address some of the problems referenced in the aforementioned analyses and reports and make operational improvements. Knowing who these parties are through their disclosures on the Form CMS–855A and to States would: (1) provide additional transparency that may assist CMS and other regulators in holding nursing facilities accountable; and (2) allow consumers to select facilities with better knowledge of their owners and operators.

3. Implementation of Section 1124(c) of the Act

Given all of the foregoing, we propose to implement section 1124(c) of the Act consistent with the statutory mandate. Although, as previously stated, CMS did not finalize its 2011 proposal to implement section 1124(c) of the Act, there are several important differences between 2011 and now.

First, and as already noted, reports linking certain types of ownership with a decline in nursing facility quality of care have become more frequent, definitive, and alarming. As the White House indicated in its February 28, 2022 announcement, this increases the urgency to take wide-ranging measures to address this problem.

Second, our enhancements to the Provider Enrollment, Chain, and Ownership System (PECOS) over the years have made the enrollment process easier and faster for SNFs than was the case in 2011. We believe this would help reduce the operational burden of reporting the requested data.

Third, and as explained further in section II.B. of this proposed rule, our intended revisions to the Form CMS–855A to collect the section 1124(c) data would be structured so that SNFs would not have to disclose this same information twice on the same application submission. That is, ownership and managerial data that must already be reported as part of the enrollment process would not need to be disclosed a second time on the same Form CMS–855A submission if it duplicates the information required under section 1124(c) of the Act. This would further alleviate the burden on nursing facilities.

Fourth, and unlike in 2011, the implementation of section 1124(c) of the Act would not be a comparatively isolated or stand-alone means of addressing nursing home ownership. Indeed, the Administration has implemented or plans to implement initiatives to strengthen its oversight of SNFs. To illustrate, CMS finalized several changes to § 424.518 in the 2023 Physician Fee Schedule final rule (CMS–1770–F), one of which requires 5 percent or greater owners of SNFs to submit fingerprints and be subject to an FBI criminal background check for certain provider enrollment transactions, such as initial enrollment and revalidation.[11] This is based on our concerns about criminal activity involving nursing facility operators and overseers.

With these changed circumstances and the pressing need to address the aforementioned issues, section II.B. of this proposed rule outlines our proposed provisions. These largely mirror what we proposed in the May 6, 2011 proposed rule and, except as otherwise specified, affect both the Medicare and Medicaid programs.

B. Proposed Provisions

1. Medicare

a. Update to § 424.516

We would add new paragraph (g)(1) to § 424.516 outlining the following information to be reported as part of a SNF's Form CMS–855A initial enrollment or revalidation application. These data elements would be designated as paragraphs (g)(1)(i) through (iv), respectively, and would be in addition to (and not in lieu of) all other reporting requirements in subpart P:

- Each member of the governing body of the facility, including the name, title, and period of service of each such member.
- Each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility, including the name, title, and period of service of each such person or entity.
- Each person or entity who is an additional disclosable party of the facility.
- The organizational structure of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

(We would clarify in the introductory paragraph of (g)(1) that initial applications include, strictly for purposes of paragraph (g)'s applicability, changes of ownership under 42 CFR 489.18. This means that the SNF's new owner, like an initially enrolling SNF, would have to disclose on its Form CMS–855A the data required per § 424.516(g). This would assist in ensuring that CMS has sufficient data on the facility's new ownership and operators.)

The four data elements in paragraphs (g)(1)(i) through (iv) are identical to those in section 1124(c)(2)(A)(ii) and (iii) of the Act. Also, and as mentioned previously, much of this information is already captured on the Form CMS–855A application. To avoid duplicate reporting and thus ease the burden on SNFs, we propose in paragraph (g)(2) that the data in paragraphs (g)(1)(i) through (iv) need not be disclosed more than once on the same application submission. To illustrate, and consistent with sections 1124(a) and 1124A of the Act, an organizational provider or supplier (including a SNF) must currently report in Section 5 of the Form

[8] GAO–22–105422, p. 1.

[9] OEI–07–20–00180, p. 1.

[10] Ibid.

[11] ''Medicare and Medicaid Programs; CY 2023 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Implementing Requirements for Manufacturers of Certain Single-dose Container or Single-use Package Drugs To Provide Refunds With Respect to Discarded Amounts; and COVID–19 Interim Final Rules'' (87 FR 69404), published in the **Federal Register** on November 18, 2022.

CMS–855A all entities with a partnership interest in the provider or supplier and, in Section 6, all of the provider's or supplier's managing employees. While proposed paragraph (g)(1)(ii) also would require SNFs to disclose this data, the SNF would not have to report it twice on the same Form CMS–855A submission: once per sections 1124(a) and 1124A of the Act and again per section 1124(c) of the Act.

New paragraph (g)(3) would state that the SNF must report any change to any of the information described in paragraphs (g)(1)(i) through (iv) within the current timeframes in § 424.516(e) for reporting changes in enrollment data—specifically, 30 days for changes in ownership or control and 90 days for all other changes. This is to ensure that CMS has accurate and updated information on the SNF.

b. Definitions

To clarify some of the terminology used in § 424.516(g)(1), we propose to add several definitions to § 424.502.

First, we propose to define ''additional disclosable party'' as meaning (with respect to a skilled nursing facility defined at section 1819(a) of the Act) any person or entity who: (1) exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility; (2) leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or (3) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility. This duplicates the definition of the same term in section 1124(c)(5)(A) of the Act.

Second, § 424.502 currently defines ''managing employee'' consistent with the definition of the same term in section 1126(b) of the Act. Section 1124(c)(5)(C) of the Act, too, defines ''managing employee,'' though only for purposes of nursing facilities under section 1124(c) of the Act. This latter definition is slightly broader and encompasses more individuals than section 1126(b) of the Act. Since the two definitions are not precisely the same, we cannot use the section 1126(b) definition for nursing facilities. Accordingly, we propose to add to the end of § 424.502's definition of ''managing employee'' a separate definition of ''managing employee'' that mirrors section 1124(c)(5)(C) of the Act and applies only to SNFs and the requirements in § 424.516(g). It would mean an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

Third, we propose to define ''organizational structure.'' It would mirror the definition of the same term in section 1124(c)(5)(D) of the Act. With respect to a SNF, it would mean—

- For a corporation—The officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent;
- For a limited liability company—The members and managers of the limited liability company including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company;
- For a general partnership—The partners of the general partnership;
- For a limited partnership—The general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent;
- For a trust—The trustees of the trust;
- For an individual—Contact information for the individual.

Fourth, we intend to add data elements to the Form CMS–855A through which owning and managing entities of SNFs would have to disclose whether they are either a private equity company or a REIT. To assist stakeholders in understanding the meaning of these terms for provider enrollment purposes, we propose to add definitions thereof to § 424.502. A private equity company would be defined as a publicly traded or non-publicly traded company that collects capital investments from individuals or entities (that is, investors) and purchases an ownership share of a provider (for example, SNF, home health agency, etc.). We would define a REIT as a publicly-traded or non-publicly traded company that owns part or all of the buildings or real estate in or on which the provider operates. We recognize that these definitions may be modestly different from definitions of the same terms used in other settings. We solicit comment on the propriety of our proposed definitions and welcome any suggested revisions thereto; we particularly seek comment on whether our proposed definition of private equity company should include publicly-traded private equity companies. We also welcome public feedback regarding any other types of private ownership besides private equity companies and REITs about which CMS should consider collecting information from SNFs as part of the enrollment process.

As previously mentioned, SNFs would have to report the information required under § 424.516(g) upon revalidation. SNFs are required to revalidate their Medicare enrollment every 5 years consistent with 42 CFR 424.515. Yet CMS under § 424.515(d) can also perform off-cycle revalidations; specifically, CMS can revalidate a provider or supplier at any time and need not wait until the arrival of their 5-year revalidation cycle. Should this proposed rule be finalized, CMS would have the authority to conduct off-cycle revalidations of SNFs to collect the section 1124(c) data.

2. Medicaid

We propose to revise our Medicaid enrollment provisions in 42 CFR part 455, subpart B, to include therein regulatory provisions akin to those we are proposing in part 424, subpart P.

In § 455.101, we propose to add the same definitions of ''additional disclosable party'' and ''organizational structure'' that we are proposing in § 424.502, excluding the reference to skilled nursing facility, a Medicare-only term; we would instead reference nursing facilities as defined in section 1919(a) of the Act.

We also propose to revise § 455.101's definition of ''managing employee'' in two ways. First, we would clarify in the definition's opening sentence that an individual can qualify as a managing employee: (1) even if he or she is acting under contract or through some other arrangement; and (2) whether or not the individual is a W–2 employee of the institution, organization, or agency. This would better conform to the current definition of the same term in § 424.502. Second, and similar to our proposed revision to the definition of ''managing employee'' in § 424.502, we propose to add to the end of the definition of this term in § 455.101 a separate definition of ''managing employee'' that mirrors section 1124(c)(5)(C) of the Act and applies only to nursing facilities. It would mean an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

Current § 455.104 identifies certain ownership and control information that Medicaid providers must disclose to enroll or remain enrolled in Medicaid.

This information includes some of that referenced in section 1124(c) of the Act, but § 455.104 does not currently incorporate all of the section 1124(c) of the Act data elements. To address this, we propose several changes to § 455.104.

First, existing § 455.104(e) states that Federal financial participation is not available in payments made to a disclosing entity that fails to report required ownership or control information. We propose to redesignate this paragraph as § 455.104(f) for organizational purposes and to establish a new § 455.104(e) that would address our proposed additional disclosure provisions.

Second, and for nursing facilities as defined in section 1919(a) of the Act, new § 455.104(e)(1)(i) through (iv) would include the same data elements described in proposed § 424.516(g)(1) through (iv). Paragraph (e)(1) would also specify that this information must be furnished (a) upon initial enrollment and revalidation and (b) in addition to (and not in lieu of) all other required data disclosures in part 455, subpart B.

Third, we propose in § 455.104(e)(2) that the state need not require the provider to report the data described in paragraph (e)(1) more than once on the same enrollment application submission. This provision is similar to that in proposed § 424.516(g)(2) for Medicare but with an important difference, in that § 455.104(e)(2) would be optional for states. That is, the state could, but would not be required to, mandate the reporting of the § 455.104(e)(1) data more than once on the same application submission. As an illustration, a particular state's enrollment application may currently require the corporate directors of each enrolling provider (regardless of type) to be disclosed in one section. Our proposal would permit the state either to use this application section alone to collect such data from nursing facilities per proposed § 455.104(e)(1) or to, for example, require nursing facilities to again submit this data on a separate application attachment exclusive to nursing facilities. Consistent with the general deference we have long afforded states regarding the operation of their Medicaid provider enrollment programs, we do not seek to overly restrict the logistical means by which states collect the information in question.

In a similar vein regarding state deference, we are not proposing that states require nursing homes to report changes to their existing section 1124(c) information within certain timeframes. However, we believe it is critical that states have accurate and updated information regarding nursing facilities' owners and operations. We therefore encourage states to establish reporting requirements regarding changes in the data required under section 1124(c) of the Act, including when the provider changes its ownership. Likewise, we suggest (but are not proposing) that states collect data signifying whether a particular organization reported under section 1124(c) of the Act is a private equity company or REIT.

C. Additional Related Proposed Provisions

1. Public Posting of Data

Section 6101(b) of the Affordable Care Act states that no later than 1 year after final regulations promulgated under section 1124(c)(3)(A) of the Act are published in the **Federal Register**, the Secretary shall make the information reported per such regulations available to the public. Consistent with section 6101(b) of Affordable Care Act, we intend to make data reported in accordance with section 1124(c) of the Act publicly available within 1 year after this rule, if finalized, is published in the **Federal Register**. We would consider making this data available on *data.cms.gov.* Further information regarding the format and scope of the published information would be provided via future sub-regulatory guidance.

2. Section 1124(c)(3)(A) of the Act

Section 1124(c)(3)(A) of the Act states, in part, that regulations implementing the reporting requirements of section 1124(c) of the Act must also require that the facility certifies (as a condition of participation and payment under Medicare and Medicaid) that the information the facility reports ''is, to the best of the facility's knowledge, accurate and current.'' Under our current Medicare regulations at § 424.510(d)(3), an authorized official or delegated official (as those terms are defined in § 424.502) must sign the Form CMS–855A on behalf of the provider. In signing the application, the official attests to the following: ''By my signature, I certify that the information contained herein is true, correct, and complete, and I authorize the Medicare fee-for-service contractor to verify this information. If I become aware that any information in this application is not true, correct, or complete, I agree to notify the Medicare fee-for-service contractor of this fact in accordance with the timeframes established in 42 CFR 424.516(e).'' This ''true, correct, and complete'' standard has been part of Medicare provider enrollment applications for many years, and we believe its lack of associated qualifying language (such as ''to the best of my knowledge'') has helped ensure that the provider and its signatory fully understand the need to submit accurate data.

We are concerned that implementation of section 1124(c)(3)(A) of the Act would result in two knowledge standards for the Form CMS–855A. Specifically, the required nursing facility information would have a ''to the best of my knowledge'' standard, whereas all other data on the application (for instance, practice locations, final adverse actions) would have an unqualified ''true, correct, and complete'' standard. This could cause confusion within the nursing facility community. More importantly, though, it might convey the impression that the provider need not be as careful and thorough about confirming the correctness of the nursing facility data in comparison to the rest of the application's information. This is because the nursing facility data would appear to invoke a lesser knowledge standard. We note that these same issues could arise with Medicaid enrollment, since some state Medicaid provider enrollment applications may have knowledge standards different from that identified in section 1124(c)(3)(A) of the Act. Due to the need to further review the potential operational implications of section 1124(c)(3)(A) of the Act, we are not proposing to implement this provision in this proposed rule but may consider doing so in future rulemaking. For the time being, the certification statement language applicable to the entire Form CMS–855A enrollment application would apply to the information described in proposed § 424.516(g).

3. Section 1124(c)(2)(B) of the Act

Section 1124(c)(2)(B) of the Act states that if a facility reports the data described in section 1124(c)(2)(A) to another Federal agency, the facility may provide the form on which the data was submitted (or other such information submitted) to meet the disclosure requirements of section 1124(c)(1) of the Act. Given the potential operational complexities of incorporating the provisions of section 1124(c)(2)(B) of the Act into § 424.516(g) or 42 CFR part 455 when we already have a vehicle (the Form CMS–855A) for collecting the data referenced in section 1124(c) of the Act, we need additional time to examine this matter. We may address section 1124(c)(2)(B) of the Act in future rulemaking.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. Background

As explained in section II. of this proposed rule, we are proposing to implement most of section 1124(c) of the Act. Section 1124(c) of the Act requires Medicare and Medicaid nursing facilities to report certain information about their ownership and operators. This data includes, but is not limited to: (1) members of the facility's governing body; (2) the facility's officers, directors, members, partners, trustees, and managing employees; (3) parties that exercise operational, financial, or managerial control over the facility or a part thereof; (4) parties who lease or sublease real property to the facility, or own a whole or part interest equal to or exceeding 5 percent of the total value of such real property; and (5) parties that furnish management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

B. Medicare ICR Estimates

We noted in section II. of this proposed rule that the Form CMS–855A (OMB Control No.: 0938–0685), which SNFs must complete to enroll in Medicare, already collects much of the aforementioned information. Examples of this data include the SNF's owners, managing employees, corporate officers, corporate directors, and other parties. As part of the enrollment process, the SNF is also currently required to submit: (1) an organizational diagram identifying all of the owning and managing entities listed on the Form CMS–855A and their relationships with the provider and with each other; and (2) a diagram identifying the organizational structures of all of the SNF's owners. Nonetheless, certain data is not collected on the existing Form CMS–855A, such as parties that perform administrative, financial, or clinical consulting services and do not qualify as another person or entity that is otherwise required to be reported on the application (for example, a managing employee or owner). Disclosure of this heretofore non-mandatory information (hereafter referenced as ''supplemental data'') would constitute additional ICR burden to the SNF community.

There would be three principal types of Form CMS–855A transactions via which SNFs would report supplemental data: (1) applications to initially enroll in Medicare (which, for purposes of the reporting requirements in proposed § 424.516(g), would include changes of ownership under 42 CFR 489.18); (2) applications to revalidate the SNF's current enrollment information per § 424.515; and (3) reporting changes to any of the SNF's previously disclosed supplemental data per proposed § 424.516(g).

Form CMS–855A applications are typically completed by the provider's office staff. However, given the potential complexity of the supplemental data to be reported, it is possible that the SNF's legal counsel would be involved in reviewing this information. Accordingly, we will use the following categories and hourly wage rates from the U.S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates for all salary estimates (*https://www.bls.gov/oes/current/oes_nat.htm*):

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Office and Administrative Support Workers, All Other	43–9199	20.47	20.47	40.94
Lawyers	23–1011	71.17	71.17	142.34

Based on our internal data, we estimate that each year approximately: (1) 1,055 SNFs would submit an initial Form CMS–855A enrollment application (excluding Form CMS–855A change of ownership applications under § 489.18); (2) 1,672 would submit a Form CMS–855A revalidation application; (3) 951 would submit a Form CMS–855A change of ownership application; and (4) 4,500 would report new or changed supplemental data via a Form CMS–855A change of information application. Furthermore, we project that it would take the SNF an average of 2.25 hours to furnish the supplemental data for initial, revalidation, and change of ownership applications and 1 hour for changes of information. (We recognize that the actual time for a particular SNF may be more or less than these figures.) Of these hour estimates, we project that the burden would be split evenly between the SNF's administrative staff and legal counsel (for example, 1.125 hours each for initial and revalidation applications). With this equal division, the per hour wage would be $91.64 (($40.94 + $142.34)/2.) As outlined in more detail in Table 2, this results in a projected annual ICR burden of our proposed Medicare SNF disclosure provisions of 12,776 hours at a cost of $1,170,793.

C. Medicaid ICR Estimates

We mentioned in section II. of this proposed rule that states have considerable discretion in the operational aspects of their Medicaid provider enrollment programs. Concerning our proposed requirements regarding nursing home data, some states may already collect all of this information, the majority of it, or only a modest portion of it. This means that the number of projected initial and revalidation applications reporting this information, as well as the time it takes the facility to disclose the data, would likely vary from state to state. Furthermore, we do not have readily available information on the number of

Medicaid nursing facility initial and revalidation applications that are submitted to each state each year. However, notwithstanding these uncertainties, we believe that reasonable estimates of the hour and cost burdens are possible.

The number of Medicaid-enrolled nursing facilities nationwide is comparable to that for Medicare-enrolled SNFs: roughly between 15,000 and 15,500. In light of this, we believe the Medicare application estimates we used in section III.B. of the proposed rule for initial and revalidation applications can—strictly for purposes of outlining a projection on which stakeholders can submit comments—be used for our proposed Medicaid provisions. Consequently, and as indicated in Table 2, we estimate an annual ICR burden for these provisions of 6,136 hours and $562,303, though, again, we seek public comments on the accuracy of this projection.

D. Total

Given the foregoing, and as outlined in the table below, we project an annual total ICR burden associated with our proposed provisions of 18,912 hours and $1,733,096.

TABLE 2—HOUR AND BURDEN ESTIMATES FOR NURSING HOME DISCLOSURE PROVISIONS

	OMB control No.	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($) (includes 100% fringe benefits) *	Total cost ($)
Medicare							
Initial Form CMS–855A Applications	0938–0685	1,055	1,055	2.25	2,374	91.64	217,553
Form CMS–855A Revalidation Applications	0938–0685	1,672	1,672	2.25	3,762	91.64	344,750
Form CMS–855A Change of Ownership Applications	0938–0685	951	951	2.25	2,140	91.64	196,110
Form CMS–855A Change of Information Applications	0938–0685	4,500	4,500	1	4,500	91.64	412,380
Medicare Totals	N/A	8,178	8,178	N/A	12,776	N/A	1,170,793
Medicaid							
Initial Application	N/A	1,055	1,055	2.25	2,374	91.64	217,553
Revalidation Application	N/A	1,672	1,672	2.25	3,762	91.64	344,750
Medicaid Totals	N/A	2,727	2,727	N/A	6,136	N/A	562,303
Totals	N/A	10,905	10,905	N/A	18,912	N/A	1,733,096

If you comment on these information collection requirements (that is, reporting, recordkeeping or third-party disclosure requirements), please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule.

Comments must be received on/by April 14, 2023.

IV. Regulatory Impact Analysis

A. Statement of Need

This proposed rule is necessary so that CMS and states can obtain important data about the owners and operators of nursing facilities. This would better enable CMS and states to monitor the ownership and management of these providers; this is an especially critical consideration given documented quality issues and differences in outcomes in nursing facilities with certain types of owners, such as private equity firms. Our proposal would also serve as an important component of the Biden-Harris Administration's initiative to improve the safety, quality, and accountability of nursing homes.[12]

B. Overall Impact of Provisions of This Proposed Rule

1. Background

We have examined the impacts of this proposed rule, as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)). This section of this proposed rule contains the impact and other economic analyses for our proposed provisions.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition,

[12] *https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.*

jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory actions and/or with economically significant effects ($100 million or more in any 1 year). Based on our estimates, this proposed rule is not economically significant since it does not meet the $100 million threshold. Nevertheless, OMB's Office of Information and Regulatory Affairs has determined that this rulemaking is ''significant'' according to section 3(f) of Executive Order 12866, ''. . . raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order . . .'' Therefore, OMB has reviewed this proposed rule, and the Departments have provided the following assessment of their impact.

C. Detailed Economic Analysis

1. Benefits

As discussed in section II. of this proposed rule, we believe the data furnished under our proposal would help CMS more closely monitor the ownership and management of nursing facilities. This, in conjunction with the Biden-Harris Administration's other initiatives, could help improve beneficiary care, although these potential benefits cannot be monetarily quantified.

2. Costs

The lone category of costs associated with this proposed rule involves nursing facilities' submission of the required information. We projected in section III. of this proposed rule that the annual burden on nursing facilities of furnishing this data would be 18,912 hours at a cost of $1,733,096. (Note that there are no Regulatory Review Costs. Costs to understand and provide the necessary data are included in the ICR costs mentioned above.)

3. Savings or Transfers

We do not anticipate any direct savings or transfers from our proposal. This is principally because the proposal merely involves the submission of data for CMS or state review.

D. Alternatives Considered

The principal alternative we considered and adopted was our proposal that a SNF would not have to report the data referenced in proposed § 424.516(g) twice on the same Form CMS–855A submission: once per sections 1124(a) and 1124A of the Act and again per section 1124(c) of the Act. This was intended to alleviate the burden on the SNF community, though we cannot quantify any resultant savings in monetary terms. We did not consider other alternatives because of the statute's clear mandate concerning the specific data to be reported.

E. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*), we have prepared an accounting statement in Table 3 showing the classification of the impact associated with the provisions of this proposed rule.

TABLE 3—ACCOUNTING STATEMENT: ESTIMATED BURDEN AND REVIEW COSTS OF NURSING FACILITY DISCLOSURE PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Units		Period covered
				Year dollar	Discount rate (%)	
Annualized Monetized ICR Burden	$1.73	$1.30	$2.16	2022	7	2022–2032
	1.73	1.30	2.16	2022	3	2022–2032

F. Regulatory Flexibility Act (RFA) Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that SNFs are small entities as that term is used in the RFA (including small businesses, nonprofit organizations, and small governmental jurisdictions). The great majority of hospitals and most other health care providers and suppliers (including nursing facilities) are small entities, either by being nonprofit organizations or by meeting the Small Business Administration (SBA) definition of a small business having revenues of less than $14 million to $30 million in any 1 year (for details, see the SBA's website at *https://www.sba.gov/document/support-table-size-standards* for the 62311 SNFs series). For purposes of the RFA, most SNFs are considered small businesses according to the SBA's size standards with total revenues of $30 million or less in any 1 year.

Individuals and states are not included in the definition of a small entity. As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. Given the: (1) fairly small number of providers that would be affected by this rule when compared with the over 2 million Medicare providers and suppliers; and (2) projected costs we previously outlined, we do not believe this threshold would be reached by the requirements of this proposed rule. Therefore, the Secretary has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has 100 or fewer beds. As this proposed rule would only affect nursing facilities, it would not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold level is currently approximately $165 million. Given the aforementioned estimated costs, this proposed rule does not mandate any requirements for State, local, or tribal governments, or for the private sector.

H. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has federalism implications. We have examined our proposed provisions in accordance with Executive Order 13132 and have determined that they will not have a substantial direct effect on State, local or tribal governments, preempt State law, or otherwise have a federalism implication.

V. Response to Comments

Because of the large number of public comments, we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on January 24, 2023.

List of Subjects

42 CFR Part 424

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 455

Grant programs—health, Health facilities, Medicaid, Program integrity.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 1. The authority for part 424 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

Subpart P—Requirements for Establishing and Maintaining Medicare Billing Privileges

■ 2. Section 424.502 is amended by—
■ a. Adding the definition of ''Additional disclosable party'' in alphabetical order;
■ b. Revising the definition of ''Managing employee''; and
■ c. Adding the definitions of ''Organizational structure'', ''Private equity company'', and ''Real estate investment trust'' in alphabetical order.

The additions and revision read as follows:

§ 424.502 Definitions.

* * * * *

Additional disclosable party means, with respect to a skilled nursing facility defined at section 1819(a) of the Act, any person or entity who does any of the following:

(1) Exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility.

(2) Leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property.

(3) Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

* * * * *

Managing employee means—

(1) A general manager, business manager, administrator, director, or other individual that exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the provider or supplier, either under contract or through some other arrangement, whether or not the individual is a W–2 employee of the provider or supplier; or

(2) With respect to the additional requirements at § 424.516(g) for a skilled nursing facility defined at section 1819(a) of the Act, an individual, including a general manager, business manager, administrator, director, or consultant, who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

* * * * *

Organizational structure means, with respect to a skilled nursing facility defined at section 1819(a) of the Act, in the case of any of the following:

(1) *A corporation.* The officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent.

(2) *A limited liability company.* The members and managers of the limited liability company including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company.

(3) *A general partnership.* The partners of the general partnership.

(4) *A limited partnership.* The general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent.

(5) *A trust.* The trustees of the trust.

(6) *An individual.* Contact information for the individual.

* * * * *

Private equity company means, for purposes of this subpart only, a publicly-traded or non-publicly traded company that collects capital investments from individuals or entities and purchases an ownership share of a provider.

Real estate investment trust means, for purposes of this subpart only, a publicly-traded or non-publicly traded company that owns part or all of the buildings or real estate in or on which a provider operates.

* * * * *

■ 3. Section 424.516 is amended by adding paragraph (g) to read as follows:

§ 424.516 Additional provider and supplier requirements for enrolling and maintaining active enrollment status in the Medicare program.

* * * * *

(g) *Skilled nursing facilities.* (1) In addition to all other applicable reporting requirements in this subpart, a skilled nursing facility (as defined in section 1819(a) of the Act) must disclose upon initial enrollment (which, for purposes of this paragraph (g), also includes a change of ownership under 42 CFR 489.18) and revalidation the following information:

(i) Each member of the governing body of the facility, including the name, title, and period of service for each such member.

(ii) Each person or entity who is an officer, director, member, partner, trustee, or managing employee (as defined in § 424.502) of the facility,

including the name, title, and period of service of each such person or entity.

(iii) Each person or entity who is an additional disclosable party of the facility (as defined in § 424.502).

(iv) The organizational structure (as defined in § 424.502) of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

(2) The skilled nursing facility need not disclose the same information described in paragraph (g)(1) of this section more than once on the same enrollment application submission.

(3) The skilled nursing facility must report any change to any of the information described in paragraph (g)(1) of this section consistent with the applicable timeframes in paragraph (e) of this section.

PART 455—PROGRAM INTEGRITY: MEDICAID

■ 4. The authority citation for part 455 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 5. Section 455.101 is amended by:
■ a. Adding the definition of ''Additional disclosable party'' in alphabetical order;
■ b. Revising the definition of ''Managing employee''; and
■ c. Adding the definition of ''Organizational structure'' in alphabetical order.

The additions and revision read as follows:

§ 455.101 Definitions.

Additional disclosable party means, with respect to a nursing facility defined in section 1919(a) of the Act, any person or entity who—

(1) Exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility;

(2) Leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or

(3) Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

* * * * *

Managing employee means—

(1) A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of an institution, organization, or agency, either under contract or through some other arrangement, whether or not the individual is a W–2 employee of the institution, organization, or agency; or

(2) With respect to the additional requirements at § 455.104(e) for a nursing facility defined in section 1919(a) of the Act, an individual, including a general manager, business manager, administrator, director, or consultant, who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

Organizational structure means, with respect to a nursing facility defined in section 1919(a) of the Act, in the case of any of the following:

(1) *A corporation.* The officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent.

(2) *A limited liability company.* The members and managers of the limited liability company including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company.

(3) *A general partnership.* The partners of the general partnership;

(4) *A limited partnership.* The general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent.

(5) *A trust.* The trustees of the trust.

(6) *An individual.* Contact information for the individual.

* * * * *

■ 6. Section 455.104 is amended by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 455.104 Disclosure by Medicaid providers and fiscal agents: Information on ownership and control.

* * * * *

(e) *Nursing facilities.* (1) In addition to all other applicable reporting requirements in this subpart, a nursing facility (as defined in section 1919(a) of the Act) must disclose upon initial enrollment and revalidation the following information:

(i) Each member of the governing body of the facility, including the name, title, and period of service for each such member.

(ii) Each person or entity who is an officer, director, member, partner, trustee, or managing employee (as defined in § 455.101) of the facility, including the name, title, and period of service of each such person or entity.

(iii) Each person or entity who is an additional disclosable party of the facility (as defined in § 455.101).

(iv) The organizational structure (as defined in § 455.101) of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

(2) The State need not require the facility to disclose the same information described in this paragraph (e) more than once on the same enrollment application submission.

* * * * *

Dated: February 8, 2023.

Xavier Becerra

Secretary, Department of Health and Human Services.

[FR Doc. 2023–02993 Filed 2–13–23; 4:15 pm]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2022–0099; FF09E22000 FXES1113090FEDR 234]

RIN 1018–BF53

Endangered and Threatened Wildlife and Plants; Removal of the Southeast U.S. Distinct Population Segment of the Wood Stork From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Southeast U.S. distinct population segment (DPS) of the wood stork (*Mycteria americana*) from the Federal List of Endangered and Threatened Wildlife due to recovery. This determination is based on a thorough review of the best available scientific and commercial data, which indicate that this wood stork DPS has recovered and the threats to it are being adequately managed such that the DPS no longer meets the definition of an endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, the prohibitions and conservation measures provided by the Act, particularly through section 7, and our regulations would no longer apply to the wood stork DPS. We are seeking information

and comments from the public regarding this proposed rule.

DATES: We will accept comments received or postmarked on or before April 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. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by April 3, 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–R4–ES–2022–0099, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2022–0099, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: This proposed rule and supporting documents including the recovery plan and the species status assessment (SSA) report are available at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2022–0099, and at the Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lourdes Mena, Classification and Recovery Division Manager, U.S. Fish and Wildlife Service, Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; telephone: 904–731–3134. 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 rule. Under the Act, the term ''species'' includes any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature. A species warrants delisting if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). The Southeast U.S. DPS of the wood stork is listed as a threatened species. We are proposing to remove it from the List because we have determined that it no longer meets the Act's definition of a threatened species, nor does it meet the Act's definition of an endangered species. Delisting a species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule proposes to remove the Southeast U.S. DPS of the wood stork from the List.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The determination to delist a species must be based on an analysis of the same factors.

Under the Act, we must review the status of all listed species at least once every five years. We must delist a species if we determine, on the basis of the best available scientific and commercial data, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11 identify three reasons why we might determine a species shall be delisted: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; or (3) the listed entity does not meet the definition of a species. Here, we have determined that the Southeast U.S. DPS of the wood stork does not meet the definition of an endangered species or a threatened species due to recovery; therefore, we are proposing to delist it.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. Due to the ongoing challenges regarding the 2019 regulations, we also seek comments on whether and how applying the regulations that were in effect before the 2019 regulations would alter any of these analyses.

We particularly seek comments concerning:

(1) Reasons we should or should not remove the Southeast U.S. DPS of the wood stork from the List;

(2) New information on the historical and current status, range, distribution, and population size of the Southeast U.S. DPS of the wood stork.

(3) New information on the known and potential threats to the Southeast U.S. DPS of the wood stork.

(4) New information regarding the life history, ecology, and habitat use of the Southeast U.S. DPS of the wood stork.

(5) New information on current or planned activities within the geographic range of the DPS that may have adverse or beneficial impacts on the species.

(6) Relevant data concerning any threats (of lack thereof) to the Southeast U.S. DPS of the wood stork, particularly any data on the possible effects of climate change as it relates to habitat, as well as the extent of State protection and management that would be provided to this bird as a delisted species;

(7) Considerations for post-delisting monitoring, including monitoring protocols and length of time monitoring is needed, as well as triggers for reevaluation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. For example, based on the new information we receive (and any comments on that new information), we may conclude that the DPS should remain listed as threatened instead of being delisted.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Previous Federal Actions

On February 28, 1984, we listed the U.S. breeding population of the wood stork as an endangered species under the Act because it had declined by more than 75 percent over a 50-year time period starting in the 1930s (49 FR 7332). We developed a recovery plan for the U.S. breeding population of the wood stork in 1987 and updated it in 1997.

Following increases in the wood stork's population, breeding range, and overall range, a 5-year status review in 2007 (Service 2007, p. 32) recommended the species be downlisted from endangered to threatened status, and in 2009, the Service was petitioned to do so. On September 21, 2010, the Service published a 90-day finding that the petition presented substantial information indicating that downlisting the U.S. breeding population of the wood stork may be warranted (75 FR 57426). On December 26, 2012, the Service found that the petitioned action was warranted and proposed to downlist the U.S. breeding population of the wood stork from endangered to threatened (77 FR 75947). In that document, we announced our conclusion that the continental U.S. breeding population of wood stork meets the discreteness and significance elements of the joint policy of the National Marine Fisheries Service and U.S. Fish and Wildlife Service regarding the recognition of distinct vertebrate population segments (see 61 FR 4722, February 7, 1996). On June 30, 2014, we finalized the rule downlisting the U.S. breeding population of the wood stork from endangered to threatened and establishing the U.S. breeding population in Alabama, Florida, Georgia, North Carolina, Mississippi, and South Carolina as a DPS (79 FR 37078).

On June 20, 2019, we initiated a 5-year review for the U.S. breeding population of the wood stork and requested new information that could have a bearing on the status of this DPS (84 FR 28850). This document completes that 5-year review.

The currently listed entity on the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h) is the ''Southeast U.S. DPS of wood stork,'' and the action being taken in this document is to propose removal of that entity from the List. However, for the sake of brevity, throughout the rest of this document we will refer to the Southeast U.S. DPS of wood stork simply as ''wood stork'' or ''the listed entity of wood stork'' when needed for clarity. We believe this abbreviated terminology should not be confusing as the Southeast U.S. DPS of wood stork is currently the only population of wood stork on the List of Endangered and Threatened Wildlife.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the Southeast U.S. DPS of the wood stork. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the DPS, including the impacts of past, present, and future factors (both negative and beneficial) affecting the DPS.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the SSA report. We sent the SSA report to 6 independent peer reviewers and received two responses. Results of this structured peer review process can be found at *https://regulations.gov.* In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the final SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in *Peer Review* above, we received comments from two peer reviewers on the draft SSA report. We also received feedback from our state wildlife agency partners. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report.

Peer and state agency expert reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and editorial recommendations to help improve clarity for the reader. We were asked to bolster our discussion of how the recovery criteria apply to our interpretation of current condition, to clarify our use of the term ''adaptability,'' and for further development of and emphasis on future climate factors, including drought, affecting wetland habitat conditions rangewide and within the Breeding Regions. We updated version 1.0 of the SSA report with these and other clarifications, additional pieces of information, and more detailed explanations that were requested during the peer and partner review, but did not find substantive changes to our analysis or conclusions necessary.

Background

A thorough review of the taxonomy, life history, and ecology of the wood stork is presented in the SSA report (Service 2021, chapters 1–3).

Distribution

Genetic analyses of wood storks (*Mycteria americana*) nesting in the

southeastern United States indicate that these birds represent a single population that shows no evidence of discrete subpopulations (Lopes et al. 2011, p. 1911; Stangel et al. 1990, p. 618; Van Den Bussche et al. 1999, p. 1083). When the wood stork was listed in 1984, the population was estimated at 4,000–5,000 nesting pairs. At that time, the overall range of the wood stork included Alabama, Florida, Georgia, and South Carolina, with breeding and nesting primarily occurring in south and central Florida, and a small number of nesting colonies in north Florida and coastal Georgia and South Carolina (Ogden et al. 1987, p. 752). Currently, the listed entity of wood stork has a distribution that includes the coastal plain of Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina, with breeding occurring in Florida, Georgia, North Carolina, and South Carolina. The most recent survey data (2021) indicate that there are 107 known active wood stork breeding colony sites, which is more than 3.5 times the number of breeding colonies (29) that were in existence at the time of listing. Within the breeding range, wood stork colonies and nest numbers generally cluster into four regions (in the south, central, northwest, and northeast portions of the breeding range) (Service 2021, p. 27). Hereinafter, we refer to these regions as the South, Central, Northwest, and Northeast Breeding Regions.

Ecology

Wood storks are colonial breeders, typically nesting with conspecifics and other wading bird species within a landscape containing sufficient wetland foraging habitats. Suitable foraging wetlands generally contain aquatic prey that is concentrated by decreasing water levels (*e.g.,* tidal creeks at low tide, ephemeral ponds, shallow wetlands, and flood plains during seasonal dry down). Colonies also occur in human-impacted areas, including in artificially impounded waters, as well on dredge spoil islands, in wastewater treatment wetlands, and on artificial nest platforms (Coulter et al. 2020, unpaginated). A large proportion of the nesting colonies in Georgia and South Carolina occur in close proximity to the expansive coastal salt marshes in these States, and foraging during the breeding and post breeding season focuses on this highly productive ecosystem (Coulter et al. 2020, unpaginated). Primary prey species vary geographically and include fish (primarily), crustaceans, amphibians, insects, snails, and reptiles (Coulter et al. 2020, unpaginated).

Life History

Wood storks are a relatively long-lived species, with the maximum age of more than 22 years documented in the wild (Coulter et al. 2020, unpaginated). Wood storks breed annually (typically only one brood per season) and exhibit extensive parental care, with nesting and brooding lasting approximately 4 months of the year. Wood storks undergo a 3-year ''sub-adult'' (non-breeding) stage before most initiate breeding at 4 years of age (Coulter et al. 2020, unpaginated).

Breeding seasonality varies regionally and is related to rainfall amounts and timing. Wood storks typically breed during periods when wetland water levels are decreasing, which concentrates prey during the period when stork nestlings are growing at a maximum rate (Coulter et al. 2020, unpaginated). After the lengthy nesting period when wood storks are associated with their colony site area, they can exhibit intra-regional movements in response to environmental conditions (*e.g.,* availability of shallow foraging habitat) (Coulter et al. 2020, unpaginated).

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The recovery plan for the U.S. breeding population of wood storks, first published in 1987, was revised in 1997 (Service 1997, entire). The major objectives identified to accomplish the recovery objective are (1) protect currently occupied habitat, (2) restore and enhance habitat, (3) conduct applied research, and (4) increase public awareness. The primary long-term recovery actions being implemented include large-scale wetland ecosystem restorations, enhancements, and management of multiple wetland systems occupied by the wood stork.

The recovery plan for the wood stork outlines the following criteria that, if met, could result in the recovery of the wood stork to the extent that it no longer warrants listing under the Act (Service 1997, p. 17):

- *Criterion 1:* An average of 10,000 nesting pairs (which constitutes 50 percent of the historical population) calculated over 5 years, beginning at the time of reclassification (2014).
- *Criterion 2:* Annual regional productivity (in each of four breeding regions) greater than 1.5 chicks per nest per year, calculated over a 5-year average.
- *Criterion 3:* As a subset of the 10,000 nesting pairs calculated over 5 years, a minimum of 2,500 successful nesting pairs must occur in the Everglades and Big Cypress systems (*i.e.,* the South Breeding Region).

Criterion 1 for delisting, which is an average of 10,000 nesting pairs

calculated over 5 years, has been met since 2016 (see table 1).

TABLE 1—FIVE-YEAR MOVING AVERAGES OF WOOD STORK NEST COUNTS FROM THE TIME OF RECLASSIFICATION (2014) TO 2021

	2014	2015	2016	2017	2018	2019	2020	2021
U.S. Breeding Population (entire DPS)	9,226	9,941	10,171	10,650	11,012	10,582	10,713*	11,139*

*2020 COVID protocols precluded a survey of all the nesting colonies in the U.S. Breeding Population. Thus, the 2020 average is a 4-year average using the years 2016, 2017, 2018, and 2019; similarly, the 2021 average is calculated using the years 2017, 2018, 2019, and 2021.

We also note that criterion 1 implies that the wood stork must exhibit a positive population growth trend to reach a breeding population of 10,000 nesting pairs. The long-term trend (1974 to 2019) shows an increase in nest counts at a rate of 153 nests per year. The current trend during the past 10 years (5-year averages from 2010 to 2019) shows an increase in nest counts at a rate of 344 nests per year.

Criterion 2 for delisting is a 5-year average annual productivity of at least 1.5 chicks per nest per year in each breeding region calculated over 5 years. This productivity metric has been achieved or exceeded in each region except for the South Breeding Region since 2018 or earlier (see table 2).

TABLE 2—FIVE-YEAR MOVING AVERAGES OF WOOD STORK PRODUCTIVITY (CHICKS PER NEST PER YEAR) FROM 2014 TO 2019

Region/year	2014	2015	2016	2017	2018	2019
Northeast	1.6	1.7	1.7	1.9	2.0	1.9
Northwest	1.3	1.3	1.0	1.2	1.5	1.7
Central	1.4	1.5	1.5	1.7	1.7	1.8
South	0.7	0.8	0.7	1.0	1.0	0.8

Criterion 3, which requires that at least 2,500 pairs (5-year average) breed in the South Breeding Region, has been achieved in each of the past five years (2017–2021) (see table 3).

TABLE 3—FIVE-YEAR MOVING AVERAGES OF THE NUMBER OF BREEDING PAIRS OF WOOD STORKS IN THE SOUTH BREEDING REGION FROM 2012 TO 2021

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
5-yr avg	2,116	2,650	2,021	2,048	1,941	3,033	2,895	2,576	2,722	3,088

Although criteria 2 has not been satisfied as specifically defined in the recovery plan, we conclude that the essential intent of this recovery goal has been achieved, mainly due to new information that has come to light since the recovery criteria were defined in the original 1987 recovery plan and carried forward to the 1997 update to the recovery plan.

For example, when the wood stork recovery criteria were originally defined, there was a focus on breeding success in the South Breeding Region, given its historical importance to the species. However, since then, wood storks have expanded their breeding range to include not only new regions, but also new habitat types such as coastal salt marsh and human-made wetlands. Coastal salt marsh in Georgia and South Carolina is now being exploited by wood storks to support breeding, and provides year-round consistent foraging, with prey concentrations being tidally dependent and less impacted by the factors that dictate prey availability in the inland freshwater wetlands. Coastal salt marsh habitat provides previously unexploited food resources and breeding habitat. It is also plentiful and widespread throughout the southeastern U.S. coastal plain from north Florida to Virginia. The expansion of the wood stork's breeding range, and its novel exploitation of other abundant wetland habitat types (such as coastal salt marsh and manmade and managed wetlands) for breeding, indicates that it is no longer as dependent on the Everglades system as once thought, and ultimately that the South Breeding Region is now less critical to the species' viability than it was historically.

At the time that the recovery criteria were established, there were only about a third of the number of wood stork colonies that exist today, as multiple breeding colonies are now present in Georgia, North Carolina, and South Carolina, where few or none had existed historically (see figure 1, below). As such, we conclude that productivity and breeding pair numbers are sufficient for wood stork viability and continue to support a growing population across the wood stork's range. Productivity is highly variable on an annual basis and slightly under the target set originally as a recovery criterion in the South Breeding Region; however, the target for this metric has been met or exceeded in all other breeding regions, and the wood stork is much less dependent on the South Breeding Region than it was historically. Thus, although criteria 2 has not been fully realized in the manner specifically identified in the recovery plan, we conclude that the intent of the criterion to ensure that productivity is sufficient for the long-term viability of the wood stork has been satisfied.

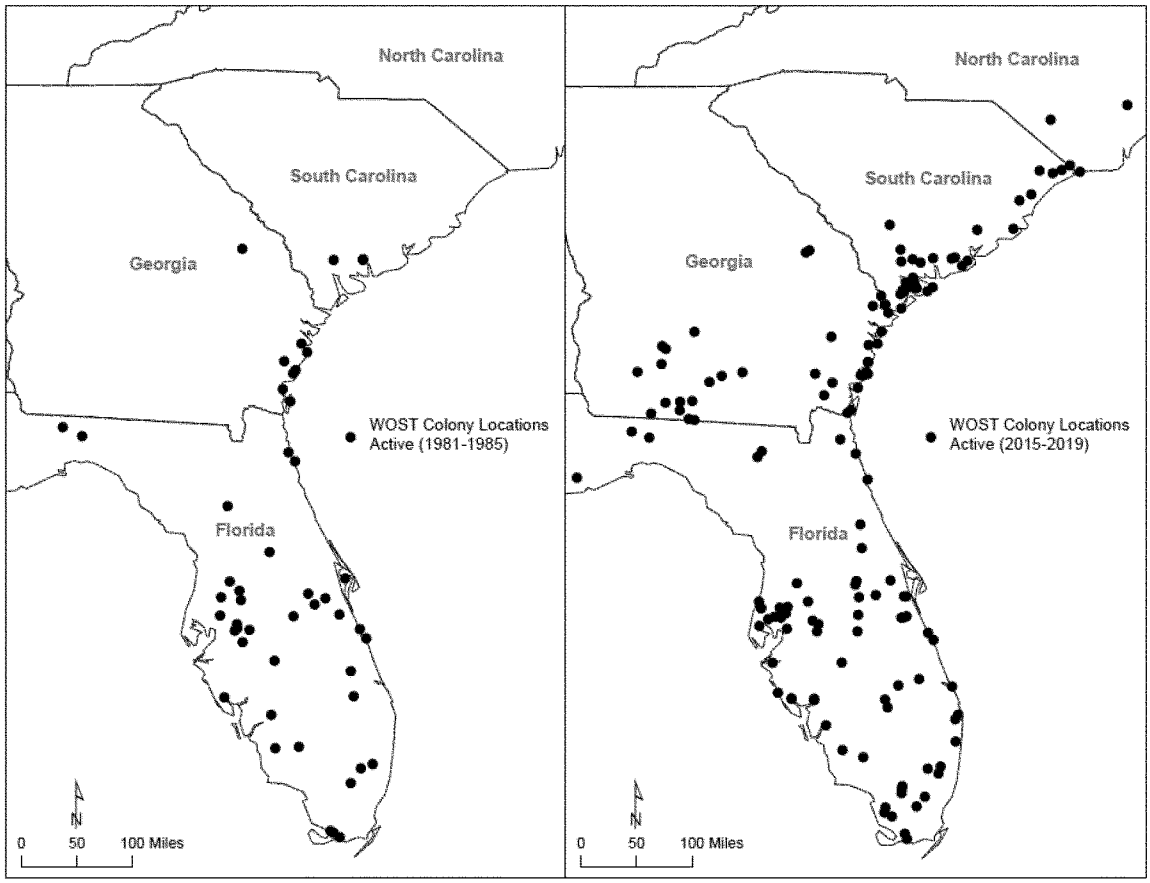

Figure 1. Active wood stork (WOST) colonies in the South Breeding Region from 1981–1985 (left) and from 2015–2019 (right).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. The determination to delist a species must be based on an analysis of the same five factors.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an

individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the wood stork, including an assessment of the potential threats to the wood stork. The SSA report does not represent our decision on whether the listed entity of wood stork should be proposed for delisting. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the wood stork's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and DPS levels, and described the beneficial and risk factors influencing the wood stork's viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual life-history needs of the wood stork. The next stage involved an assessment of the historical and current condition of the wood stork's demographics and habitat characteristics, including an explanation of how the wood stork arrived at its current condition. The final stage of the SSA involved making predictions about the wood stork's responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of the wood stork to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R4–ES–2022–0099 on *https://www.regulations.gov* and at *https://www.fws.gov/office/florida-ecological-services.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the wood stork and its resources, and the threats that influence the wood stork's current and future condition, in order to assess the wood stork's overall viability and the risks to that viability. In addition, the SSA (Service 2021, entire) documents our comprehensive biological status review for the species, including an assessment of the potential threats to the species.

The following is a summary of this status review and the best available information gathered since that time that have informed this decision.

Species Needs

Wood storks are a wetland-dependent species. They use a wide variety of freshwater and estuarine wetlands for nesting, feeding, and roosting throughout their range (Coulter et al. 2020, unpaginated). Local hydrologic conditions correlate to annual nesting effort (Klassen et al. 2016, pp. 1450–1460). Wood storks feed primarily on fish and other aquatic prey by tactilocation. They forage most efficiently in shallow wetlands where prey is concentrated, and their intra-regional movements during the breeding and non-breeding seasons are typically in response to the availability of such shallow wetlands (Coulter et al. 2020, unpaginated).

Wood storks are colonial breeders, typically nesting with conspecifics and other wading bird species. Wood stork breeding colonies are found within landscapes containing sufficient wetland foraging habitats, and wood storks nest over or surrounded by water in natural and human-altered freshwater and marine-estuarine forested habitats (Rodgers et al. 1996, pp. 18–19). Inundation of trees prior to and during nesting reduces predation at nests, and thus reduces nest abandonment and nest failure. Alligators are typically present in wood stork colonies and limit access to nests by mammalian predators such as raccoons. However, drought conditions can result in drying under the nest trees and increased predation (Coulter et al. 2020, unpaginated).

In the southeastern United States, wood storks use a large variety of wetland habitats and use native and nonnative trees for nesting substrate (Rodgers et al. 1996, pp. 2–17). In recent years, an increasing number of colonies have established in wetlands in close proximity to human development such as housing, roads, and active waterways (Tsai et al. 2016, p. 644). Wood storks feed on fish and other aquatic prey in natural and artificial wetlands where water depths are appropriately shallow (less than 50 cm or 20 in, and often 10–30 cm (4–12 in)), and the habitat is not densely vegetated (Coulter et al. 2020, unpaginated; Service 1997, pp. 3–4). The presence of wood storks feeding in human-altered landscapes has become more common in recent years, and, as such, observations of wood storks foraging in urban environments and

manmade wetlands during both the breeding and non-breeding seasons is not uncommon (Evans and Gawlik 2020, p. 1).

Wood storks typically roost in trees, over or surrounded by water, and may roost at breeding colony sites and foraging sites. Wood storks may also roost or rest on the ground (*e.g.,* levees, open grassy fields, mud flats) close to foraging areas (Coulter et al. 2020, unpaginated).

Thus, wood storks throughout all phases of life depend upon various types of shallow wetlands, both natural and manmade, both freshwater and estuarine, for foraging and nesting habitat both inside and outside of the breeding season. They need forested wetlands of various types in proximity to foraging habitat, that host a variety of suitable emergent native and nonnative tree and shrub species, for breeding colonies (nest substrate), as well as for roosting outside of the breeding season. Wood storks also require an adequate abundance of prey items, which include a wide variety of aquatic animal species, but especially fish, such as sunfish (see figure 2).

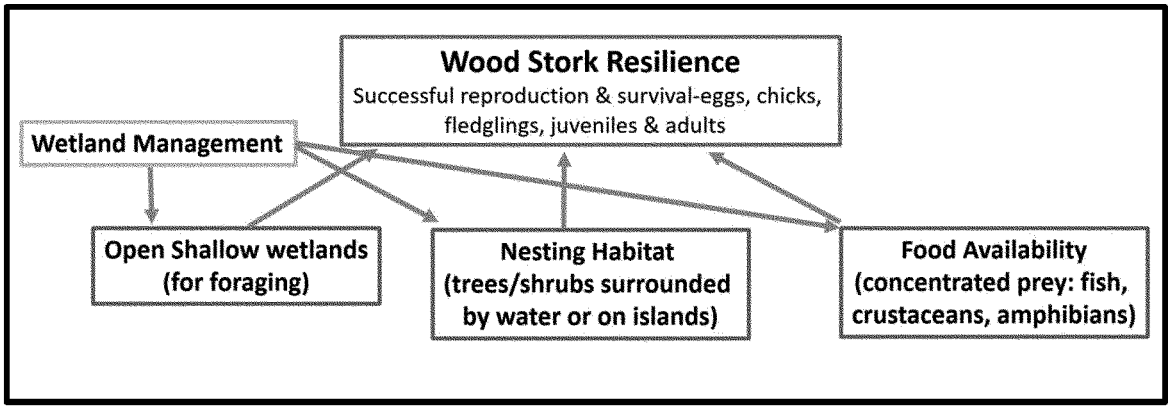

Figure 2. Species needs for the Southeast U.S. DPS of the wood stork.

Threats

Threats to wood storks are described in detail in the SSA report (Service 2021, chapter 5). The primary threats to wood storks, or those that affect the species at the population level, are habitat loss, conversion, and degradation (acting on populations currently and into the future), and climate change effects including warming temperatures and drought, precipitation changes, and sea level rise (acting on populations primarily in the future).

Habitat Loss, Conversion, and Degradation

Land conversion due to development, agriculture, and mining impact wood storks through habitat loss, degradation, and conversion (Coulter et al. 2020, unpaginated). This stressor directly reduces the availability and quality of breeding and roosting habitat, and indirectly impacts food resources in those habitats and in other foraging habitat (Coulter et al. 2020, unpaginated). Conversion and loss of habitat may also exacerbate the normal effects of periodic drought on wood storks, which do poorly in all aspects of their life cycle when prolonged dry conditions prevail (Borkhataria et al. 2012, p. 524; Gaines et al. 2000, p. 64). One of the primary reasons for the historical decline of the Southeast U.S. DPS of the wood stork was the dredging of canals and draining of wetlands to accommodate the settlement of south Florida and provide means of flood control, which altered the hydrologic regimes of the Everglades and Big Cypress ecosystems (Ogden and Nesbitt 1979, p. 512; Ogden and Patty 1981, pp. 99–100; Service 1997, p. 10). Drainage of wetlands throughout the wood stork's range resulted in loss of habitat available to wood storks. Many wetlands were historically converted for agricultural production; however, the rate of land conversion to agriculture has slowed from historical levels (Nickerson and Borchers 2012, entire), primarily due to laws and regulatory review with goals to avoid and minimize impacts to wetlands.

Increased water consumption, especially that which is associated with industrial and agricultural lands, is another factor accompanying land conversion that impacts wood storks through habitat degradation. Large water withdrawals can alter the water table and reduce water levels in wetlands. Further, changes in hydrological regimes and reduced fire frequency can create drier wetland conditions, which can exacerbate the encroachment of woody vegetation into wetlands, and the subsequent succession of wetland to upland habitat (Clem et al. 2019, p. 370; Hall et al. 2017, p. 52). However, ongoing large-scale wetland restorations continue to mitigate some of these negative effects, and based on the best available information, we conclude that these factors are not occurring at such a magnitude to cause population decline for wood storks.

Despite the negative impacts to wetland habitats, wetlands of the southeastern U.S. coastal plain are extensive and significant large- and small-scale wetland restoration efforts have occurred and are underway throughout the wood stork's range (Service 2021, pp. 71–74). Further, wetland habitat loss is avoided, minimized, and mitigated through existing wetland laws and regulations, such as the Clean Water Act (33 U.S.C. 1251 *et seq.*). Additionally, wood storks use habitat opportunistically and will exploit urban and suburban environments, and even use human-created and human-converted wetlands for foraging, roosting, and nesting (Evans and Gawlik 2020, p. 1). Thus, while there are still cases where natural wetland habitat is being lost or becoming fragmented due to human-related habitat conversion, the abundance and distribution of human-made wetlands that incidentally provide food resources and nesting habitat for wood storks have increased. Currently, numerous wood stork colonies throughout the wood stork's range are located in human-modified and human-created wetlands.

Climate Change

Climate change is causing a variety of changes to the various ecosystems and

wetland habitats that wood storks depend upon throughout their life cycle. Climate change is driving numerous stressors that will impact the resources and conditions needed by wood storks, thereby having the potential to affect the wood stork's demographic rates (nest success, juvenile and adult survival) and resulting viability. The stressors to wood storks associated with climate change include warming temperatures, precipitation changes, drought, and sea level rise. Many of these climate-related stressors can exacerbate the stressors caused by habitat loss, described above. However, effects of climate change may result in both negative and positive effects to wood storks under certain circumstances.

Warming temperatures—Climate change predictions suggest overall warming temperatures throughout North America, including throughout the range of the wood stork, under all greenhouse gas emission scenarios (IPCC 2014, p. 58). If we examine current projections under plausible future greenhouse gas concentrations (termed ''representative concentration pathways,'' or RCPs) over the 2050 to 2074 timeframe relative to the 1981 to 2010 timeframe, the 50th percentile (median) annual mean maximum air temperature for the South Atlantic–Gulf Region (which includes the Southeast U.S. DPS of the wood stork's range) warms by 3.9 degrees Fahrenheit (°F) (2.2 degrees Celsius (°C)) under RCP4.5, whereas the region warms by 5.7 °F (3.2 °C) under RCP8.5 (Alder and Hostetler 2013, entire).

Warming temperatures contribute to increased drying and drought conditions (Alder and Hostetler 2013, entire), which can also increase the access terrestrial predators have to wood stork nests and nestlings (Coulter et al. 2020, unpaginated). Warming also contributes to sea level rise (Alder and Hostetler 2013, entire), the effects of which are discussed below. Conversely, warming temperatures may also be one of the factors that is leading to the expansion of the wood stork's breeding range beyond its historical boundaries (including into North Carolina), as has been documented for many other North American bird species (Hitch and Leberg 2007, p. 534). Warming may also contribute to changes in nesting phenology and the extension of the breeding season, as evidenced by asynchronous nesting that is being documented throughout the breeding range. For example, wood storks may have more opportunity to renest after previously failed attempts, or to nest later in the season in order to take advantage of optimal habitat conditions in other portions of the range.

Changes in precipitation—Climate change is expected to change precipitation patterns throughout the wood stork's range, but the impacts vary among important habitat types. An overall increase in rainfall due to climate change is expected throughout much of the range. Relative to 1981–2010, the 50th percentile (median) for annual mean precipitation under RCPs 4.5 and 8.5 is expected to increase in the South Atlantic–Gulf Region in 2050–2074 by a relatively small amount (0.2 to 0.3 in (5.1 to 7.6 millimeters (mm)) per month) (Alder and Hostetler 2013, entire). Scaled-down models indicate that precipitation increases will vary regionally, however. For example, in the Ogeechee–Savannah watershed (Northeast Breeding Region), precipitation is expected to increase slightly more (0.3 to 0.4 in (7.6 to 10.2 mm) per month) than in the Everglades watershed (South Breeding Region) (increase of 0.1 to 0.3 in (2.5 to 7.6 mm) per month) in the same time period (Alder and Hostetler 2013, entire).

The timing and amount of precipitation in wood stork habitat influences wood stork prey development, availability, and dispersion. Adequate precipitation can help maintain good hydrologic conditions, which help bolster wood stork survival and productivity, and large rain events can offset drought conditions. However, excessive rainfall generally has a negative impact by dispersing prey and effectively inhibiting wood stork nutrient consumption. This phenomenon is magnified during the breeding season, when it can result in nest abandonment and/or reduced chick survival (caused by inadequate provisioning of chicks by adults) (Cook 2021, p. 5). A rainfall deficit on the other hand, especially in combination with warming temperatures, could contribute to drying and drought conditions, which are discussed below. In general, precipitation is also likely one of the primary drivers that cause segments of the wood stork population to migrate, depending upon local and regional habitat conditions.

Drying—Rising temperatures are expected to increase evaporation, meaning that wood storks could face increased drought-like conditions, which can be measured by a metric called the evaporative deficit. In the time period between 2050–2074, the 50th percentile (median) evaporative deficit across the South Atlantic–Gulf Region indicates drier conditions under RCP4.5 and RCP8.5, relative to 1981–2010 (Alder and Hostetler 2013, entire). For example, the deficit increases modestly by 0.2 in (5.1 mm) per month in the Ogeechee–Savannah watershed under both scenarios during the same time period. Similarly, the deficit increases by 0.2 to 0.3 in (5.1 to 7.6 mm) in the Everglades under RCP4.5 and RCP8.5, respectively. Further, standardized precipitation index data from 2000–2015 suggest that extended periods of dry weather are likely going to increase in the future throughout Florida, particularly in the northern part of the State (*i.e.,* the panhandle) and areas around Lake Okeechobee (Collins et al. 2017, p. 585). In Georgia and South Carolina, even if average annual precipitation remains constant, higher temperatures will likely increase drought intensity (Service 2021, pp. 58–62).

Drought conditions generally lead to poor nesting success and productivity. However, the timing of drought conditions dictates when and how impacts to wood stork productivity will be realized. Initially, a drought can concentrate prey and lead to efficient foraging and good productivity for wood storks, but an extended drought also lowers prey productivity, which in turn lowers prey availability for wood storks in future years, and can thereby negatively impact future wood stork nesting and productivity. In addition, drought conditions can increase colony predation by making it easier for terrestrial predators to access wood stork nests and chicks.

Data on wood stork habitat selection and availability are not currently available range-wide, but wetland habitat throughout the Southeast U.S. DPS of the wood stork's range is widely available. The southeastern United States has nearly 48 million acres of wetlands, which account for more than 43 percent of the nation's palustrine and estuarine wetlands (Sucik and Marks 2015, p. 11). Our assessment of core foraging area supporting the current active wood stork nesting colonies includes over 11 million acres of suitable wetland habitat (Service 2021, p. 129). Historically, wetland habitat loss or degradation was the main driver of wood stork population decline, primarily in south Florida which supported nearly the entire breeding population. Human activity during the decades prior to listing of the species in 1984 had reduced wetland areas in this region by 35%, and construction of canals and ditches changed the hydrology of ecosystems like the Everglades, Lake Okeechobee, Kissimmee River, and Big Cypress Swamp. However, since that time

Everglades restoration efforts have been underway, and the species now has additional breeding strongholds in north Florida, Georgia, South Carolina, and North Carolina, where it exploits new habitat types such as coastal saltmarsh, and palustrine and manmade freshwater wetlands. As a result, suitable breeding and foraging habitat is widely available across the species' current range. While climate change may cause an increase in conditions that degrade or convert wetland habitat used by wood storks for nesting and foraging, currently habitat availability does not appear to be limiting wood stork resiliency.

Changes in hurricane patterns—The frequency and intensity of hurricanes and other heavy precipitation events will likely be affected by climate change in North America (IPCC 2014, p. 53). The projected warmer climate will potentially decrease the frequency of tropical cyclones but increase the intensity of these events when they occur in the Atlantic Basin (Collins et al. 2017, p. 610). Direct mortality of wood storks due to storms is not common, and although damage to nesting vegetation at colony sites has been documented, nesting generally continues in following years (Cook & Baranski 2019, p. 1). In many cases, wood storks will have a very productive breeding season in the year following one where a hurricane impacted the breeding habitat due to improved wetland hydrologic conditions resulting from the additional precipitation brought by a hurricane event (Cook & Baranski 2019, p. 1). Hurricanes also commonly act as an erosional agent and may deliver significant volumes of sediment to the marsh surface, which could aid wood stork resiliency by increasing vertical accretion of salt marsh habitat (Staro et al. 2021, p. 1). Therefore, while it is difficult to predict the long-term, population-level effects to wood storks of hurricane patterns influenced by climate change, the best available information does not indicate that hurricane impacts are limiting to wood stork resiliency, nor are they predicted to do so in the future.

Sea level rise—Warming temperatures, coupled with other factors influenced by climate change such as the melting of continental ice, will cause sea levels to rise (Vermeer and Rahmstorf. 2009. Entire). Because wood storks mainly forage in water less than 20 in (50 cm) deep, projected sea level rise exceeding 39 in (0.99 m) by the end of the century would make portions of the currently occupied coastal habitat unusable for foraging. As such, sea level rise and the associated flooding of coastal wetlands may result in the loss and degradation of both foraging and coastal nesting habitats. Sea level rise is also likely to increase the storm surge potential along major coastlines (Collins et al. 2017, p. 611). Storm surge is the rise in water level during a storm, which can cause flooding of coastal wetlands and uplands as the storm's winds push water onshore.

However, while sea level rise is expected to cause the degradation and loss of existing coastal wetland habitats in some areas, it is also likely to create new salt marsh habitat in other adjacent habitats (Colombano et al. 2021, pp. 1639 and 1642; Fagherazzi et al. 2020, entire). Sea level rise will cause shifts in wetlands landward, with salt and brackish marshes transgressing upslope into coastal freshwater wetlands and low-lying upland areas. Vertically, saltmarsh has to accumulate enough material to contrast rising water levels or drown; horizontally, salt marsh erosion at the ocean side will be compensated by landward expansion of salt marsh up slope, but the upslope extent will depend upon the slope gradient of the adjacent uplands (Fagherazzi, et al. 2020, entire). Therefore, although we can project through modeling where currently occupied wood stork habitat is likely to be inundated by sea level rise, it is less clear where and how much new brackish and saltmarsh habitat likely to be exploited by wood storks as a foraging or nesting resource will be created as coastal estuarine marshes migrate upslope in response to sea level rise. As such, the negative impacts to wood stork resiliency caused by habitat loss or degradation due to inundation by sea level rise is likely to be mitigated at least in part by positive impacts to resiliency from newly created salt marsh.

Predicted climatic changes that could impact future wood stork populations include changing of precipitation patterns, increased temperature/drying, and sea level rise. The potential influence of precipitation, hydroperiod, and drying conditions on wood stork foraging habitat quantity and quality, and ultimately on wood stork breeding success, will vary considerably relative to local landscape conditions. For example, the type, abundance, underlying topography, and connectivity of the wetlands associated with each breeding colony will influence how these changes in the climate will impact wood stork resiliency. In general, projected changes in precipitation, temperature, and drying are expected to vary among breeding regions and even among colonies in a single breeding region and could result in either positive or negative effects on breeding success from year to year. For example, initially drought conditions may concentrate prey and lead to increased productivity in a given year, but multi-year droughts would likely lead to lower productivity years when prolonged low water conditions inhibit the regeneration of prey species. Similarly, it is unclear how more intense hurricane and tropical storm events will impact wood storks, as previously mentioned. Therefore, we have limited our future climatic impact scenario to sea level rise, for which the negative effects to occupied habitat and the wood stork's response to these effects can be projected with reasonable certainty.

In summary:

- Changes in seasonal rainfall patterns coupled with warming temperatures could increase the occurrence and severity of drought and wetland drying. Multi-year droughts could negatively impact breeding and survival demographics, but effects will vary among breeding regions and even among colony sites.
- Changes to the quantity and intensity of precipitation (including hurricanes), depending on timing, will alter foraging habitat availability and associated wetland forage resources for wood storks; however, these factors could have a positive and/or negative affect on demographics.
- Warming temperatures contribute to increased sea level rise, which is expected to result in the loss of coastal wetland habitat. Sea level rise will result in the loss of some foraging, nesting, and roosting habitat that is currently occupied. However, coastal marshes are projected to transgress upslope along with sea level rise at the land and water interface, so some habitat will shift rather than be lost. To what extent the breadth and width of salt marsh will migrate upslope and elevate through accretion is yet to be fully modeled.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the wood stork, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the wood stork. To assess the current and future condition of the wood stork, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing

the wood stork, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire Southeast U.S. DPS of the wood stork, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

The long-term survival and recovery of the wood stork requires the presence of a mosaic of wetland habitats for breeding, foraging, and roosting scattered throughout its range during varying climatic and seasonal conditions. Current management actions that address foraging and breeding habitats include maintenance and protection of existing wetlands, creation of new wetland habitats, and restoration of previously impacted habitats. Details of conservation efforts can be found in the SSA report (Service 2021, chapter 5.1.4), but are summarized below:

- Lands with natural and manmade wetlands which contribute to wood stork recovery have and continue to be targeted for acquisition for conservation through Federal, State, and private acquisition programs. The Everglades Headwaters National Wildlife Refuge and Conservation Area initiated in 2012 includes 2.6 million acres of grassland savannah with wet and dry prairie that encompasses the Kissimmee River Valley. Conservation easements and acquisitions purchases for the 150,000 acre approved acquisition boundary are underway, and will provide conservation benefits to wood storks.
- Large-scale watershed and wetland ecosystem restoration initiatives with regionwide impacts have and continue to help restore wetland ecosystems throughout the southeastern United States, including: Everglades (Comprehensive Everglades Restoration Plan have completed 24 of the 68 restoration elements identified in the plan), Picayune Strand (fifty percent hydraulic restoration achieved through road removal, plugging canals, and pump stations), Southern Corkscrew Watershed (4,000 acres of willow infested wetlands treated thus far), Kissimmee River (restoration has already been completed with more than 40 miles of river floodplain ecosystem), Upper St. Johns River Basin (166,000 acres of the headwaters already restored), Everglades Headwaters (lands and conservation easements being actively acquired), Tampa Bay Estuary, Lake Apopka (15,000 acres of wetlands restored on former farms), Altamaha River Watershed, Lower Savannah River Watershed, and Ashepoo–Combahee–Edisto Rivers Basins (over 160,000 acres of upland and wetland habitat protected).
- Smaller scale, more localized wetland restoration projects on individual public, private, industrial, and Department of Defense properties within the range of the wood stork have and continue to improve wood stork habitat, through various programs including: National Coastal Wetlands Program, Wetland Reserves Program (restored over 325,000 acres across several states, and one site now supports a nesting colony), Partners for Wildlife, Stewardship Incentive Program, North American Waterfowl Management Plan, and North American Wetlands Conservation Act (77 projects across several states affecting 250,000 acres of wetlands).
- Colony sites have been and continue to be managed, enhanced, and restored, resulting in wood stork recolonization (Woody Pond colony in Georgia; Dugannon Plantation and Green Pond colonies in South Carolina; Duck Lake, Orlando Wetlands, Se7en Wetlands, and Wakadohatchee Wetlands colonies in Florida).
- Suitable foraging wetlands have been and continue to be created within diked ''impoundments,'' through modifications of existing impoundments, restoration of impacted wetlands, and creation of shallow short hydro-period wetlands.
- Tidal impoundments (*e.g.,* former rice fields) in South Carolina (40,000 acres with dike and water management infrastructure for management, and 190,000 acres reverted tidal marsh bottom lands, hardwoods, and forests) and Georgia are now managed to provide winter habitat for waterfowl and foraging for wood storks year-round; and, by staggering drawdowns, concentrated prey is being made available to wood storks throughout the breeding and post-breeding seasons.
- Wastewater treatment flow through marshes and other manmade wetland features are increasing within the southeastern United States and are used by wood storks as both foraging and breeding habitats. For example, in Florida, management for wastewater treatment now supports 200 acres of wetlands at Viera Wetlands and 125 acres of wetlands at Sweetwater Wetlands Park; and wastewater treatment wetlands now support a wood stork nesting colony each at Wakodahatchee Wetlands (50 acres of wetlands), Orlando Wetlands (1,200 acres of wetlands), and at Se7en Wetlands (1,600 acres of wetlands).
- Wetlands negatively impacted by encroaching woody plants (*e.g.,* willows) have been and continue to be restored by combining herbicide and mechanical methods; these projects have opened up impacted wetlands and made them available for wood stork use as colonies and foraging sites.
- Colonies occurring on State and Federal lands (*e.g.,* the Service's National Wildlife Refuges, National Park Service lands, Department of Defense lands, National Aeronautics and Space Administration lands) are and will continue to be afforded some protection from development and large-scale habitat disturbance through State and Federal regulations, and on private lands through conservation partnerships and landowner stewardship.
- Partnerships developed through conservation easements, wetland restoration projects, and other conservation means, have and will continue to minimize potential loss of colony sites.

Current Condition

The U.S. breeding population of wood storks (*i.e.,* the Southeast U.S. DPS of the wood stork) has been categorized as a single population by genetic analyses to date, which have been corroborated by documented intra-regional movements of breeding-aged individuals and shifts in nesting throughout the range (Stangel et al. 1990, p. 618; Van Den Bussche et al. 1999, p. 1083). Within the breeding range, wood stork colonies cluster into the South, Central, Northwest, and Northeast breeding regions (see figure 3). These clusters vary by climate, geography, and landscape features, as well as their influences on wood stork ecology, habitat, and behavior.

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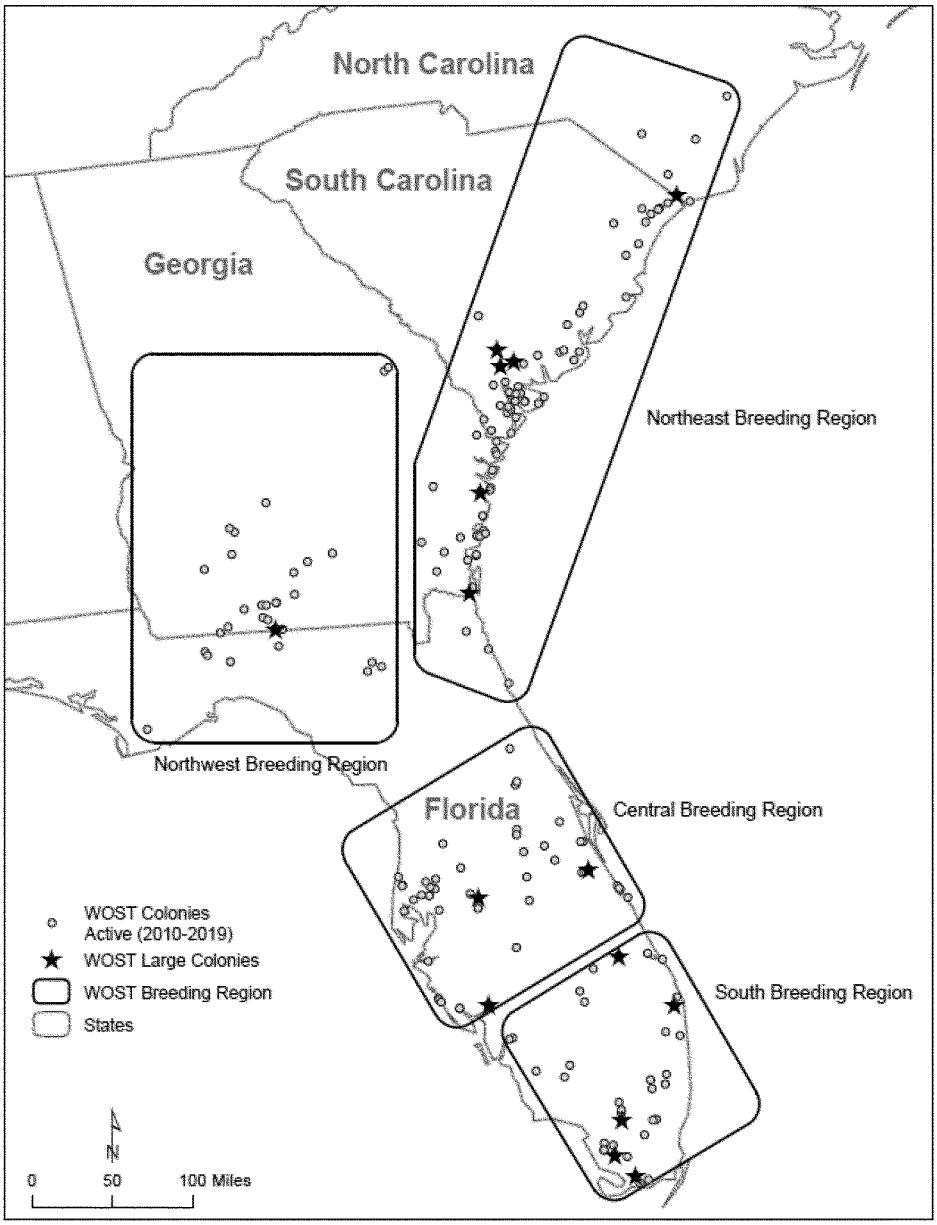

Figure 3. Wood stork (WOST) breeding colonies in the United States.

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Current Resiliency

Demographic factors such as abundance, adult survival, reproductive success, juvenile recruitment, and population growth influence wood stork resiliency. To assess the current condition of the wood stork, we focused on those factors that contribute to resiliency, including nesting population size (number of pairs/nests); population growth trend; number of large, persistent nesting colonies (colonies that consistently support over 200 pairs); and productivity (fledged chicks per nest), which are all described in greater detail in the SSA report (Service 2021, chapter 4). We categorically assigned a condition of high, moderate, or low to each of these factors for each breeding region and for the DPS as a whole (see table 4).

TABLE 4—WOOD STORK POPULATION CONDITION CATEGORIES BASED ON POPULATION METRICS

Population metric	Low condition	Moderate condition	High condition
Population Size (Nests/Pair)	<1,500	1,500–2,499	>2,500.
Large Persistent Colonies	0–1	2–4	5 or more.
Productivity	<1.3	1.3–1.7	>1.7.
Population Trend	Declining	Stable	Increasing.

Finally, we assessed the current overall resiliency of each breeding region based on the average condition of each category of the demographic factors, resulting in the overall current condition of each breeding region ranging from high to moderate (see table 5).

TABLE 5—CURRENT CONDITION OF EACH WOOD STORK BREEDING REGION

Breeding region	Population size	Population trend	Large persistent colonies	Productivity	Overall demographic condition
Northeast	High	High	High	High	High.
Northwest	Low	High	Low	High	Moderate.
Central	High	High	Moderate	High	High-Moderate.
South	Moderate	Moderate	High	Low	Moderate.
Southeast U.S. DPS	High-Moderate	High-Moderate	High-Moderate	High-Moderate	High-Moderate.

Because wetland habitat throughout the wood stork's range is widely available and does not appear to be a limiting factor, we did not include a measure for habitat resiliency factors in the analysis of current condition. The southeastern United States has nearly 48 million acres of wetlands, which account for more than 43 percent of the nation's palustrine and estuarine wetlands (Sucik and Marks 2015, p. 11). However, potential future impacts to core foraging area habitats that support nesting colonies were considered for the analysis of future condition. Thus, we used population demographics to measure the current condition of each breeding region, and then we used habitat condition as a proxy for population resiliency in order to project the future condition of each breeding region based on the primary threats to wood stork into the future (see *Future Scenarios,* below, for more information).

Current Redundancy and Representation

As previously described, the Southeast U.S. DPS of the wood stork is a wide-ranging, single population, with all breeding occurring in Florida, Georgia, South Carolina, and North Carolina. However, for our analysis of current and future condition, we identified four breeding regions (see figure 3, above), as defined by the clustering of nesting colonies and nesting numbers (within and across the geographic borders) among the four States, in order to assess redundancy, even though there is no biological or ecological distinction among individuals in these four areas. Wood stork nest numbers often fluctuate among breeding regions within and between years, due to environmental conditions (*e.g.,* rainfall amounts and timing). In contrast to historical trends, 40–50 percent of wood stork nesting now occurs in the Northeast Breeding Region. The wide spatial extent covered by the Southeast U.S. DPS of the wood stork across the four breeding regions reduces the risk to the DPS, because it is unlikely that a single catastrophic event would impact all four breeding regions. Furthermore, the impacts of stressors in one region may be mitigated by the fluid nature of breeding throughout the range. In addition, having several large and/or persistent colonies as anchors within each breeding region provides resiliency within each region and represents a form of redundancy for the Southeast U.S. DPS of the wood stork.

Maintaining representation in the form of genetic or ecological diversity is important to sustain the capacity to adapt to future environmental changes. As previously discussed, there is little genetic diversity among the Southeast U.S. DPS of the wood stork. However, ecological diversity within the range of the species is extensive. Wood storks use a mosaic of wetland habitats for nesting, roosting, and foraging. These include shallow and persistent (*i.e.,* short and long hydroperiod) wetlands, marshes, and shallow open water habitats (including freshwater, brackish water, and saltwater habitat associated with natural and anthropogenic landforms). Negative impacts to the wetlands of the Everglades and other wetlands in south Florida from development and agriculture was a major contributor to the population decline that led to the listing of the U.S. breeding population of the wood stork, but also may have influenced the regional shift in abundance of nesting storks northward. Although wood storks have always had the ability to nest in other parts of their range, they historically concentrated in south Florida because the reproductive rewards there were higher for less cost, resulting in greater reproductive success. However, as conditions deteriorated and dried in south Florida, the extensive salt marshes, coastal wetlands, and old rice impoundments in Georgia and South Carolina offered greater stability, and as such became better options for foraging during the breeding season; the result was that the wood stork population center shifted north. The wood stork now consistently breeds in four distinctive coastal plain regions within its range: Southern Florida Coastal Plain (South Breeding Region), Southern Coastal Plain (Central and Northeast Breeding Regions), Middle Atlantic Coastal Plain (Northeast Breeding Region), and Southeastern Coastal Plain (Northwest Breeding Region). Further, current wood stork nesting in North Carolina appears to indicate range expansion, which is likely a response to climate change as it has been documented in multiple other bird species worldwide (Hitch and Leberg 2007, p. 534). Thus, the shift of wood stork breeding colonies in response to habitat conditions, and the expansion northward of its historical range, may demonstrate an innate behavioral and adaptive response to deteriorating or long-term changes in habitat conditions and climate, which ultimately indicates a certain degree of adaptive capacity and adequate representation in wood storks.

Some wood storks are ''residents'' (remain in one area all year), some exhibit migratory movements among breeding regions and other areas in Alabama and Mississippi, and others employ both strategies (Picardi et al. 2020, p. 9) depending upon habitat conditions. In response to climatic conditions in the fall and winter, most wood storks move south into Florida, especially towards South Florida, or to coastal habitats if residing in South Carolina, Georgia, or north Florida (Coulter et al. 2020, unpaginated). These patterns indicate plasticity that allows individuals to respond to current environmental conditions and to move (or not) depending on local resource availability.

Wood storks also use human-made wetlands such as canals, ditches, impounded ponds and lakes, and other urban habitats rangewide, which they were not known to use historically. Historically, wood storks were thought

to be intolerant of human disturbance (Burleigh 1958, p. 119). However, with the increase in use of urban habitats, wood storks appear more tolerant of human activity, to the extent that they will nest and forage in highly urbanized areas like stormwater retention ponds in housing developments, in commercial shopping areas, and along busy roads (Evans and Gawlik 2020, p. 1; Tsai et al. 2016, p. 644). Thus, wood storks will use suitable foraging wetlands and nesting habitats found in a variety of natural and human-influenced and -created habitats.

As mentioned previously, representation is the ability of a species to adapt to both near-term and long-term changes in its physical and biological environment. Species adapt to novel changes in their environment by either: (1) moving to new, suitable environments or (2) altering their physical or behavioral traits (phenotypes) to match the new environmental conditions through either plasticity or genetic change (Beever et al. 2016, p. 132; Nicotra et al. 2015, p. 1270). Thus, representation reflects the ability of the species to respond and adapt to changing conditions (adaptive capacity), either by changing themselves, or by responding to changes around them. Representation is often measured in the genetic, morphological, ecological, behavioral, or other types of diversity present among populations, but as noted previously there is little evidence of these types of differences among populations of wood stork. However, the wood stork's innate behavioral capacity to respond to deteriorating and changing wetland conditions on a daily, seasonal, annual, and long-term basis, and to exploit novel habitat types such as human-made wetlands, indicates adaptive capacity. Wood storks in the Southeast U.S. DPS have gradually shifted and expanded their breeding range (*e.g.,* northward into three new States) and increased their habitat use (*e.g.,* to include urban wetlands, impounded wetlands, and coastal salt marshes of Georgia and South Carolina) in response to changing conditions. Ultimately, these responses demonstrate a degree of adaptive capacity despite a lack of evidence showing genetic diversity within the DPS.

Future Scenarios

To analyze the wood stork's viability, we considered the current demographic condition and future availability or condition of resources important to wood storks. To examine the potential future availability or condition of resources important to wood storks, we developed three future scenarios based on projections for land development, sea level rise, impacts of changing climate conditions, and beneficial conservation actions. More detail on how we assessed each of these metrics can be found in the SSA report (Service 2021, chapter 6). Note that we did not model how population demographics will change under future conditions, nor on how wood storks will respond to changing habitat conditions; rather, the future scenarios consist of habitat-based analyses that project the future condition of the current core foraging areas in each breeding region, employing the condition of required wood stork habitat as a proxy for the condition of the wood stork population, or its resiliency. Core foraging areas are suitable foraging wetlands within a set distance from each colony that is based on regional follow flight study data: 30 kilometers (km) (19 miles (mi)) in south Florida, 25 km (16 mi) in central Florida, and 20 km (12 mi) in all other regions/States (Borkhataria et al. 2013, pp. 8–9; Bryan et al. 2012, p. 293; Cox et al. 1994, p. 134).

The best available data to inform our wood stork future condition analysis was limited to consideration of currently-occupied wood stork habitat and how the major habitat threats may reduce or degrade that occupied habitat. We used modeling to project the future condition of the habitat in currently occupied breeding colonies and core foraging areas. However, models cannot account for the potential expansion, change, or shift of the nesting colonies into currently unoccupied, but suitable habitat. Models cannot account for the expansion of wood stork breeding regions, or of the overall breeding range, in response to wood stork population growth or changes to habitat, which is a phenomenon that has been underway since the 1980s and is still occurring. Based on recent and current trends, we expect that the Southeast U.S. DPS of the wood stork will continue to grow and respond to changing environmental and habitat conditions, and to human-caused degradation, conversion, restoration, or creation of wetland habitats on small and large scales as they have in recent history. As a result, because our future condition analysis is limited to currently occupied habitat, it is conservative and likely considerably underestimates what the true condition of the Southeast U.S. DPS of the wood stork will be into the future as it continues to expand and inhabit suitable but currently unoccupied habitat.

We considered a 30- and 60-year timeframe into the future (2050 and 2080) for the future analysis. These time elements are within the predictive range of the model used to project future development for the southeastern U.S. coastal plain, and within the climate change forecasts (Sweet et al. 2017, entire) that cover the southeastern United States. These scenarios are probable representations of how the primary stressors to the species and their sources have the potential to impact wood storks rangewide.

Potential future impacts associated with changing climatic conditions (*i.e.,* estimates for precipitation, drought, temperature, and sea level rise) were based on climate model projections downscaled for Florida, Georgia, and South Carolina. However, as discussed above under *Threats,* climate metrics such as precipitation, temperature, and drying will likely be variable on regional and local scales and could result in positive and/or negative impacts on the wood stork's breeding success. As such, we cannot reliably project effects to wood storks from these climate metrics. Therefore, we have focused our future climatic impact scenarios on varying degrees of sea level rise because modeling of sea level rise impacts to occupied habitat is available throughout the range of the wood stork, and the effects on occupied habitat are reasonably predictable, although we acknowledge potential effects to wood storks due to other climatic variables as well. To model sea level rise, we used the National Oceanic and Atmospheric Administration (NOAA) sea level rise projections (Sweet et al. 2017, entire).

To forecast future urbanization/development, we considered future scenarios that incorporate the SLEUTH (Slope, Land use, Excluded area, Urban area, Transportation, Hillside area) model, which simulates patterns of urban expansion that are consistent with spatial observations of past urban growth and transportation networks (Terando et al. 2014, entire).

Biologically, the 30- and 60-year timeframes cover 7 and 15 wood stork generations, respectively, assuming a generation time of 4 years (Coulter et al. 2020, unpaginated). These multi-generational timeframes allow for adequate time to detect a downward population trend, and to subsequently formulate responses with appropriate conservation actions.

The future scenarios we assessed include varying time frames and magnitude of stressors that relate primarily to climate change and land conversion, but also to ongoing conservation actions that help to mitigate stressors. All are based on the best scientific and commercial

information available at this time. Details on future scenarios can be found in the SSA report (Service 2021, chapter 6.1). Scenario 1 assumes a continuation of current land conversion trends projected into the future, a NOAA ''intermediate'' sea level rise projection, and that wetland restoration and management efforts and conservation implementation continues at least at the current rate. Scenario 2 assumes a continuation of current land conversion trends projected into the future, a NOAA ''high'' sea level rise projection, and that regulatory protections of wetlands and conservation implementation continue at least at current levels. Scenario 3 is the same as Scenario 2 in relation to the current land conversion trend and a NOAA ''high'' sea level rise projection, but it assumes a significant decrease in regulatory protections and conservation management (*e.g.,* due to changes in interpretation or implementation of wetland protection rules, lower funding levels for conservation or management, and wetland restorations not targeting benefits to wood storks specifically).

We considered three plausible future scenarios, with variations in the future influence of the primary threats, over a 30-year (to 2050) and 60-year (to 2080) projection (see table 6).

TABLE 6—THREE POTENTIAL FUTURE SCENARIOS FOR THE SOUTHEAST U.S. DPS OF THE WOOD STORK BASED ON CLIMATE CHANGE, LAND USE, AND CONSERVATION EFFORTS

Climate change	Land use change/development	Conservation actions
Scenario 1—Intermediate Sea Level Rise; No Change in Conservation		
Sea-level rise: NOAA ''intermediate'' projection.	SLEUTH 2050 & 2080 Nesting colony core foraging area habitat impacted by development (70 percent probability or greater) by 2050 and 2080.	Wetland habitat protections, conservation, management, acquisitions, and restoration efforts at least at current levels.
Scenario 2—High Sea Level Rise; No Change in Conservation		
Sea-level rise: NOAA ''high'' projection.	SLEUTH 2050 & 2080 Nesting colony core foraging area habitat impacted by development (70 percent probability or greater) by 2050 and 2080.	Wetland habitat protections, conservation, management, acquisitions, and restoration efforts at least at current levels.
Scenario 3—High Sea Level Rise; Reduced Conservation		
Sea-level rise: NOAA ''high'' projection.	SLEUTH 2050 & 2080 Nesting colony core foraging area habitat impacted by development (70 percent probability or greater) by 2050 and 2080.	Wetland habitat regulatory protections, conservation management, and acquisitions decreased due to changes in regulatory mechanisms and lower funding levels. Restorations: No longer target providing benefits for wood storks.

Future Condition

We measured the future condition of wood stork habitat resiliency by the changes in the current core foraging areas due to the primary influence factors (sea level rise, land conversion/urbanization, and conservation implementation). We assessed habitat condition based on the percentage of acres remaining after projected urbanization impacts on the core foraging areas; percentage of the wetlands, nesting colonies, and large persistent colonies remaining within the core foraging areas after sea level rise; and varying degrees of conservation implementation, projected over a 30- and 60-year future timeframe.

Our analysis accounts for changes to habitat within the current core foraging areas of a breeding region but does not predict the response of wood storks to changing habitat conditions (*e.g.,* relocation to other areas due to declining conditions, colonization of new sites and core foraging areas, etc.). Historical evidence from wood stork response to the ditching and draining of wetlands in the Everglades and south Florida indicates that some storks will continue to nest in areas with declining habitat conditions, and other wood storks will move and seek more optimal habitat conditions and either locate other active colony sites or pioneer new colony sites. Thus, our analysis may overestimate the loss of wood stork resiliency as a result of changing habitat in the current core foraging areas, as it cannot account for new habitat that may be colonized for breeding and foraging as conditions in currently occupied areas deteriorate.

As previously described, we measured the current condition of each breeding region by demographic metrics (population size, population trend, the number of large persistent colonies, and productivity). We then used the current condition as a proxy for the baseline habitat condition for the future condition analysis; the underlying assumption is that habitat condition reflects demographic conditions and vice versa. We considered the future under 30- and 60-year timeframes (to 2050, and to 2080). A more detailed account of how we assessed the projected effects of each of the primary influence factors on habitat in the future to determine the future condition of each breeding region can be found in the SSA report (Service 2021, chapter 6).

Future Resiliency

As mentioned previously, climatic variables such as periodicity and amounts of rainfall, drought, and hurricane frequency and intensity, will vary annually in the future and impacts to individual colony sites and foraging habitats will be dependent on an extensive range of local conditions. Thus, impacts of these climatic variables to habitat are less predictable, as is the species' response to these impacts. In general, temperature and precipitation increases are projected in each of the wood stork breeding regions. An increase in evaporative deficit can lead to drought conditions that would impact wetland habitats and foraging resources. The evaporative deficit is projected to increase at a similar rate under both RCP8.5 and RCP4.5 in the wood stork's range. Overall, this change will affect the long-term trend in wood stork resiliency. Projected drought and stronger hurricanes will directly impact wetlands and individual colony sites across the wood stork's range. This

change could affect nesting both negatively and positively and will contribute to variability in annual nesting success. If available in the future, downscaled climate models for each of the breeding regions could be helpful in predicting localized impacts and developing future management options to support wood stork breeding ecology in each region.

All future scenarios in each breeding region project some impact to wetlands and colonies from sea level rise, and a reduction in the current core foraging area. However, the analysis does not account for suitable habitat created by the same sea level rise conditions that result in the loss of some currently occupied habitat (*i.e.,* we cannot project the width, breadth, or increase in elevation of salt marsh transgression upslope along the land-water interface). Further, these scenarios do not account for how wood storks respond to the changing habitat conditions. For example, while we expect that in some cases individuals displaced by lost habitat may pioneer new colony sites and foraging habitats within the same or other breeding regions, or into new unoccupied areas that contain suitable habitat, our analysis of future condition could not account for these potential outcomes. There are a limited number of wood stork colony losses that have been documented, primarily due to anthropogenic factors (*e.g.,* draining). It appears that these colony losses did not result in losses of individual storks, but rather in individuals not breeding in a given year and/or shifting to nearby sites for breeding in that same or the following year (Service 2021, chapter 6.1.1). Wood storks may shift habitat use in response to future inundation of coastal colonies from sea level rise; therefore, the projected loss of existing colony sites in the following future condition discussion may not result in an equivalent reduction in the number of actual colony sites in the future (but rather a shift in location from current to new colony sites in some cases), or in a reduction in the number of breeding pairs present rangewide.

South Breeding Region Resiliency—Currently, the total area within the South Breeding Region core foraging areas is 7,577,090 acres, which includes 3,840,486 acres (51 percent) of wetlands and 1,367,663 developed acres (18 percent). This breeding region supports 36 colonies, of which 5 are designated as large, persistent colonies.

Under Scenario 1, sea level rise is projected to impact 11 and 14 percent of the wetlands in the core foraging areas by 2050 and 2080, respectively; the area impacted by (and potentially lost to) sea level rise will include 8 (22 percent) of the 36 colony sites. None of the five large, persistent colonies will be impacted by sea level rise in either timeframe. Land conversion will increase from 18 percent to 24 and 30 percent of the core foraging areas under the 2050 and 2080 timeframe projections, respectively; however, as stated previously, habitat does not appear to be a limiting factor for wood stork resiliency. Conservation efforts, such as wetland conservation easements and regulatory mechanisms to avoid/minimize/mitigate impacts to wetlands, remain at least at current levels under Scenario 1, making wood stork resiliency at these colony sites under Scenario 1 similar to that under Scenario 2, and better than that under Scenario 3.

Under Scenario 2, sea level rise is projected to result in loss of 16 and 18 percent of wetlands in the core foraging areas by 2050 and 2080, respectively. Of 36 colony sites, 9 (25 percent) will be impacted by (and potentially lost to) sea level rise in both the 2050 and 2080 timeframe projections. None of the five large, persistent colonies will be impacted by sea level rise in either timeframe. Land conversion in the core foraging areas will increase from 18 percent to 24 percent and 30 percent by 2050 and 2080, respectively. Conservation efforts are maintained under Scenario 2 and reduced under Scenario 3. However, in this breeding region the conservation efforts under Scenario 2 would not likely counteract the other negative influence factors considered (*e.g.,* habitat loss due to sea level rise and development trends); therefore, conservation efforts would be unlikely to significantly affect the overall future condition of the South Breeding Region between Scenarios 2 and 3. Overall, we expect resiliency in this breeding region to decline to some degree under all three future scenarios.

Central Breeding Region Resiliency—Currently, the total area within the Central Breeding Region core foraging areas is 8,270,482 acres, which includes 2,302,543 acres (28 percent) of wetlands and 2,045,622 developed acres (25 percent). This breeding region includes 48 colonies, of which 3 are designated as large, persistent colonies.

Under Scenario 1, sea level rise is projected to impact 7 and 9 percent of the wetlands in the core foraging areas by the 2050 and 2080 future timeframe projections, respectively; the area impacted (and therefore potentially lost to) by sea level rise will include 10 (21 percent) of the 48 colony sites in the 2050 projection, and 13 (27 percent) of the 48 colony sites in the 2080 projection. One of the three large, persistent colonies (33 percent) will be impacted by (and potentially lost to) sea level rise in both future timeframe projections. Land conversion will increase from 25 percent to 32 and 39 percent of the core foraging areas under the 2050 and 2080 timeframe projections, respectively. Conservation efforts are maintained at least at current levels under Scenario 1, making wood stork resiliency at these colony sites under Scenario 1 similar to that under Scenario 2 and better than that under Scenario 3.

Under Scenario 2, sea level rise is projected to result in losses of 10 and 12 percent of wetlands in the core foraging areas by 2050 and 2080, respectively. Of the 48 colony sites, 13 (27 percent) and 16 (33 percent) are projected to be impacted by (and potentially lost to) sea level rise by 2050 and 2080, respectively. One of the three large, persistent colonies will be impacted by (and potentially lost to) sea level rise in both future timeframe projections. Land conversion in the core foraging areas will increase from 25 percent to 32 percent and 39 percent by 2050 and 2080, respectively. Conservation efforts are maintained under Scenario 2 and reduced under Scenario 3. In the Central Breeding Region, conservation efforts under Scenario 2 would partially offset negative influence factors, resulting in slightly better wood stork resiliency at colony sites under Scenario 2 when compared with Scenario 3. Overall, we expect resiliency in this breeding region to decline to some degree under future Scenarios 1 and 2, and slightly more so under future Scenario 3.

Northwest Breeding Region Resiliency—Currently, the total area within the Northwest Breeding Region core foraging areas is 5,306,878 acres, which includes 1,286,773 acres (24 percent) of wetlands and 397,523 developed acres (7 percent). This breeding region includes 30 colonies, of which one is designated a large, persistent colony.

Under Scenario 1, sea level rise is projected to impact 4 and 6 percent of the wetlands in the core foraging areas by 2050 and 2080, respectively; the area impacted by sea level rise will not include any of the 30 colony sites in either future timeframe projection. The one large, persistent colony in this region will not be impacted by sea level rise in either future timeframe projection. Land conversion will increase from 8 percent to 15 and 22 percent of the core foraging areas under the 2050 and 2080 timeframe projections, respectively. Conservation efforts are at least at current levels

under Scenario 1, making wood stork resiliency at these colony sites under Scenario 1 similar to that under Scenario 2 and better than that under Scenario 3.

Under Scenario 2, sea level rise is projected to result in the loss of 8 percent of wetlands in the core foraging areas in both future time projections. Of the 30 colony sites, none are projected to be impacted by sea level rise by 2050, and one is projected to be impacted by (and potentially lost to) sea level rise by 2080. The one large, persistent colony will not be impacted by sea level rise in either future timeframe projection. Land conversion in the core foraging areas will increase from 8 percent to 15 percent and 22 percent by 2050 and 2080, respectively; though suitable habitat is widely available, and it does not appear that habitat is a limiting factor for wood stork resiliency. Conservation efforts are maintained at least at current levels under Scenario 1 and Scenario 2, and reduced under Scenario 3. However, in this breeding region conservation efforts would not likely counteract the other negative influence factors considered (*e.g.,* habitat loss due to sea level rise and development trends), and, therefore, conservation efforts would be unlikely to significantly affect the overall future condition of the Northwest Breeding Region among the three future scenarios. Overall, we expect resiliency in this breeding region to remain stable under future Scenario 1, and to decline to a minor degree under future Scenarios 2 and 3.

Northeast Breeding Region Resiliency—Currently, the total area within the Northeast Breeding Region core foraging areas is 9,204,711 acres, which includes 3,607,715 acres (39 percent) of wetlands and 1,034,357 developed acres (11 percent). This breeding region includes 76 colonies, of which 6 are designated large, persistent colonies.

Under Scenario 1, sea level rise is projected to impact 33 and 37 percent of the wetlands in the core foraging areas by 2050 and 2080, respectively; the area impacted by (and potentially lost to) sea level rise will include 4 (5 percent) of the 76 colony sites in the 2050 projection, and 15 (20 percent) of the 76 colony sites in the 2080 projection. None of the large, persistent colonies in this region will be impacted by sea level rise in either future timeframe projection. Land conversion will increase from 11 percent to 16 and 21 percent of the core foraging areas under the 2050 and 2080 timeframe projections, respectively. Conservation efforts are maintained at least at current levels under Scenario 1, making wood stork resiliency at these colony sites under Scenario 1 similar to that under Scenario 2 and better than that under Scenarios 3.

Under Scenario 2, sea level rise is projected to result in losses of 37 and 41 percent of wetlands in the core foraging areas by 2050 and 2080, respectively; the area impacted by (and therefore potentially lost to) sea level rise will include 15 (20 percent) of the 76 colony sites in the 2050 projection, and 43 (57 percent) of the 76 colony sites in the 2080 projection. None of the large, persistent colonies will be impacted by sea level rise by 2050, but 2 of the 6 (33 percent) will be impacted by (and potentially lost to) sea level rise by the 2080 future timeframe projection. Land conversion in the core foraging areas will increase from 11 percent to 16 percent and 21 percent by 2050 and 2080, respectively. Conservation efforts are maintained under Scenario 2 and reduced under Scenario 3. However, in this breeding region, the conservation efforts under Scenario 2 would not likely counteract the other negative influence factors considered (*e.g.,* habitat loss due to sea level rise and development trends); therefore, conservation efforts would be unlikely to significantly affect the overall future condition in the Northeast Breeding Region between Scenarios 2 and 3. Overall, we expect resiliency to decline to some degree in this breeding region under future Scenario 1, and more so under future Scenarios 2 and 3.

Future Redundancy

Overall, the future scenarios project either the continuation of current conditions or some deteriorated conditions within each of the four breeding regions. We project that overall wood stork breeding conditions will be adequate and all of the breeding regions (as currently defined) will be maintained despite varying degrees of potential habitat loss, conversion, or degradation; effects from climate change, such as changing precipitation patterns and prolonged droughts; reduced reproductive success; and increased mortality in eggs and young. We expect that each breeding region will maintain at least one large, persistent nesting colony and several other colonies, and that there will be no major reduction in the wood stork's overall range even with some habitat loss due to sea level rise. No extirpation of any of the breeding regions is anticipated. Local losses of current core foraging habitat due to environmental, anthropogenic, or stochastic changes at currently occupied colony sites and foraging areas are likely to continue to displace some individuals (as has occurred in the past). However, we expect that the Southeast U.S. DPS of the wood stork will also likely continue its trend of population growth and range shift or expansion into existing nearby suitable habitat and to new colony sites to replace colonies that are impacted or otherwise rendered unsuitable, leading to the continuation of all four existing breeding regions into the future. Thus, despite lowered resiliency at some occupied sites given certain future scenarios under consideration, we expect that the wood stork will maintain its current level of redundancy in the Southeast U.S. DPS.

Future Representation

No behavioral, genetic, morphological, or observable variations have been described within or among the breeding regions in the Southeast U.S. DPS of the wood stork. However, current representation is thought to be high due to the wood stork's historically demonstrated ability to continuously respond to changing habitat conditions and maintain and increase abundance while expanding its range northward. If current trends continue, it would be expected that the wood stork's range will continue to shift and expand. The large majority of the breeding range, which extends across four States, is predicted to maintain resiliency into the future, and thus we expect that the wood stork will continue to be represented within the southeastern U.S. coastal plain within the current range of Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina. However, any decrease in future resiliency in populations could translate to a modest loss of representation (*i.e.,* decreased resiliency may result in fewer individuals, which provide less opportunity for diversity). Regardless, the wood stork has exhibited a proclivity to respond to historical changes, so despite potential losses in resiliency within the four breeding regions and the associated implications for representation, we expect that representation will remain relatively high among breeding regions in each of the future scenarios we considered.

Determination of the Southeast U.S. DPS of the Wood Stork's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in

danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the wood stork and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that, based on the best available information, the wood stork in the Southeast U.S. DPS is not in danger of extinction now throughout all of its range.

Currently, all four wood stork breeding regions are either increasing or stable in the number of nesting pairs and are in an overall moderate to high condition based on demographic measures including productivity; large, persistent colonies; and abundance. Thus, the wood stork exhibits adequate resiliency in all of the breeding regions.

There are more than 3.5 times the number of wood stork breeding colonies in existence today as there were at the time of listing (103 now compared to 29 in 1984), indicating that redundancy in the population has been increasing over time. There are currently over 100 colonies spread throughout the Southeast U.S. DPS of the wood stork's historical range and beyond, making it unlikely that a single catastrophic event could threaten the existence of the species in this DPS, and indicating that redundancy in the wood stork population is adequate.

The shift in concentration of the wood stork population from primarily south Florida northward into Georgia, South Carolina, and North Carolina since the 1980s makes the population more resilient, as it is now less dependent on one geographical area and ecotype. Further, wood storks are now exploiting many more types of foraging and breeding habitats than they did historically, including coastal salt marsh and manmade wetlands in addition to inland freshwater wetlands, and they are using both native and exotic vegetation as nesting substrate, and foraging on native, exotic, and novel prey items. Coastal salt marsh is abundant throughout the southeastern United States and provides a more consistently reliable food source year-round than does the inland freshwater wetland habitat upon which the population was dependent historically. The wood stork's shift from dependence primarily on freshwater wetlands during the breeding season to use of coastal salt marsh as well means that it is less reliant on favorable climate and weather patterns, and less vulnerable to unfavorable anthropogenic influences, all which influence the seasonal hydrological cycles that dictate prey availability in inland freshwater wetland ecosystems. All of these factors indicate high adaptive capacity and, therefore, adequate representation within the population.

Further, conservation and favorable management have increased since the time of listing in 1984, and many regulated wetlands are now being managed in ways that allow for public water management goals to be met while also providing suitable conditions for wood stork breeding and foraging. With moderate to high resiliency in each breeding region, and adequate redundancy and representation in the Southeast U.S. DPS of the wood stork, the wood stork is not currently in danger of extinction throughout the DPS's range.

We next considered whether the Southeast U.S. DPS of the wood stork is likely to become in danger of extinction throughout its range in the foreseeable future. We determined the foreseeable future to be 60 years from present because that is the timeframe in which we can reliably predict both the threats to the wood stork and the wood stork's response. Two time-steps (30 years from present and 60 years from present) were considered for the future condition analysis. These time-steps are within the predictive range of the model used to project future development for the southeastern U.S. coastal plain (Terando et al. 2014, entire) and are also within the climate change forecasts (Sweet et al. 2017, entire) that cover the southeastern United States. Biologically, the 30- and 60-year timeframes cover 7 and 15 wood stork generations, respectively, and thus allow for adequate time to predict a population response to the influence factors we analyzed.

Climate change (Factor E) is likely to lead to increased hurricane intensity and changes to precipitation patterns in the future, but these impacts are likely to vary locally and the wood stork's response to these changes could be positive, negative, or both. Projections of increased temperature may lead to increased evaporative deficit and greater potential for drought-like conditions, which over time would likely reduce resiliency of wood stork populations to some degree, although these effects would likely vary locally. In addition, sea level rise will displace wood storks from some of their currently occupied habitat in the future. However, sea level rise will also create new salt marsh habitat that wood storks will be able to exploit. Further, habitat does not appear to be a limiting factor, as there is an abundance of suitable freshwater wetland and salt marsh habitat available that is not yet being used by the expanding wood stork population. The southeastern United States has nearly 48 million acres of palustrine and estuarine wetlands; this is by far more than any other region of the country and accounts for more than 43 percent of the nation's palustrine and estuarine wetlands (Sucik and Marks 2015, p. 11). Most of these wetland acres in the southeastern U.S. are located in the coastal plain, and currently the core foraging areas that support the active wood stork colonies include over 11 million acres of suitable foraging wetland habitat (Service 2021, p. 129). Thus, while sea level rise will render some currently occupied habitat unusable for wood storks, there will likely be an adequate amount of additional unoccupied suitable habitat available for use even under scenarios of future sea level rise.

We now know that there is a fair amount of plasticity that exists within this species, with some individuals readily responding to environmental conditions by employing facultative migration and optimizing use of breeding and foraging habitat within and among colony sites, breeding regions, and breeding years. This behavioral flexibility suggests that the species will have the ability to adjust to changing habitat conditions into the future, just as they do now and have done historically in response to anthropogenic changes to the Everglades. Thus, wood storks in the Southeast U.S. DPS are expected to be able to tolerate future shifts in suitable habitat caused by climate change.

Besides climate change, habitat conversion due to urbanization (Factor A) is the other population-level threat to the wood stork. Land use modeling shows that urban expansion and development will continue to impact currently occupied habitat to a similar degree throughout the range of the wood stork. However, conservation efforts are expected to help to mitigate this threat.

Regulatory and voluntary conservation programs are currently underway that benefit wood stork foraging and breeding habitat, and include efforts to maintain and protect existing wetlands, acquire new wetland habitat for maintenance and protection, create new wetland habitat, and restore previously impacted habitat. There are many Federal laws and regulations for the restoration, management, and protection from degradation and destruction of wetland resources (Votteler and Muir 2002, entire), including, but not limited to, the Clean Water Act, National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), North American Wetlands Conservation Act of 1989 (16 U.S.C. 4401 *et seq.*), and Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*).

Even in the absence of the Act's protections, as a wetland dependent species, wood storks will continue to benefit from wetland restoration and protection. For example, the Comprehensive Everglades Restoration Plan (CERP), authorized by the Water Resources Development Act of 2000 (33 U.S.C. 2201 *et seq.*), remains among the highest national conservation priorities for the Service. The CERP includes performance goals for wood storks, such as achieving 1,500 to 3,000 nesting pairs annually and ensuring that the initiation of breeding is no later than January each year (to maximize productivity). As such, this unique Federal/State partnership drives Everglades and Big Cypress restoration efforts, and we anticipate will continue to facilitate an increasingly robust wood stork breeding population in the future.

The wood stork's past and continued recovery is owed in part to conservation efforts to protect and restore wetlands. Because many of these conservation efforts are aimed at wetland protection and restoration, and therefore unrelated to species-specific protections, we expect that they will continue to benefit the Southeast U.S. DPS of the wood stork into the foreseeable future regardless of its status under the Act.

Further, the wood stork's increased use of urban and suburban environments, and human-made and -altered wetlands, indicates that the wood stork is more likely to tolerate at least some degree of urbanization more than species that rely more exclusively on relatively unaltered natural ecosystems.

We anticipate that the wood stork's positive population growth rate will continue into the near future. We expect wood storks will continue to pioneer new colonies within the four breeding regions, and the expansion of the breeding range will continue. As such, we expect that the wood stork will maintain robust (sufficiently resilient) breeding colonies comparable in size and distribution to those that exist today in each of the breeding regions, across and beyond its historical range (redundancy), and continue to demonstrate high adaptive capacity (representation) by making use of ecological and behavioral plasticity in order to optimize survival and productivity now and into the future despite varying degrees of threats due to habitat loss and climate change. Thus, after assessing the best available information, we conclude that the wood stork is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the wood stork is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction (*i.e.,* endangered) or likely to become so in the foreseeable future (*i.e.,* threatened) in a significant portion of its range—that is, whether there is any portion of the wood stork's range for which it is true that both (1) the portion is significant; and (2) the species is in danger of extinction or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the wood stork's range.

In undertaking this analysis for the listed entity of wood stork, we choose to address the status question first. We began by identifying portions of the range where the biological status of the species may be different from its biological status elsewhere in its range. For this purpose, we considered information pertaining to the geographic distribution of (a) individuals of the species, (b) the threats that the species faces, and (c) the resiliency condition of populations.

We evaluated the range of the wood stork to determine if it is in danger of extinction now or likely to become so in the foreseeable future in any portion of its range. Because the range of a species can theoretically be divided into portions in an infinite number of ways, we focused our analysis on the four wood stork breeding regions described in the SSA report (Northwest, Northeast, Central, and South) (Service 2021, chapter 3.2).

At the outset we note that, while the wood stork recovery targets originally established in the recovery plan have been met or exceeded in the Northwest, Northeast, and Central breeding regions, they have not all been met in the South Breeding Region. However, these recovery targets were developed at a time when it was believed that the status of the Southeast U.S. DPS of the wood stork as a whole largely depended on this region. As previously described, we now know that the wood stork is much less dependent on the South Breeding Region, and, as such, these targets may no longer represent the best available science now that the wood stork has expanded its range substantially and is thriving in more abundant habitat types such as salt marsh. Further, even though productivity in the South Breeding Region is slightly under the target identified in the recovery plan, this metric is stable and would not indicate a different status for the individuals that breed in the South Breeding Region (*i.e.,* would not indicate that the individuals that breed in that portion of the range would be at risk of extinction now or in the foreseeable future).

We also considered whether the threats or their effects on the wood stork are greater in any portion of its range than in other portions such that the wood stork is in danger of extinction now or likely to become so in the foreseeable future in that portion. We examined the following threats and influence factors: climate change, urbanization (land conversion), and regulatory and voluntary conservation efforts, including cumulative effects.

Climate change is projected to result in warmer temperatures, increased precipitation, increased evaporative deficits (drought-like conditions), and increased intensity of hurricanes, but the effects of these factors on the resiliency of the wood stork are expected to vary locally depending on ecological conditions and landscape attributes at each colony site. While downscaled climate models may in some cases provide higher confidence projections for localized effects, they are not available for comparison across all

of the wood stork's distribution. Instead, projections for climate variables that are available for comparison across all colony sites are at the scale of the South Atlantic–Gulf Region, which includes the entirety of the wood stork's current U.S. distribution. We consider this regional climate projection to be the best available scientific information regarding the potential effects of climate change that may affect the wood stork in this region. As such, our analysis of these projections does not indicate that any one portion of the wood stork's range will be more impacted by the effects of increasing temperatures, changes in precipitation patterns, and drought-like conditions than any other.

Sea level rise projections are similar across the range of the wood stork, with an increase of 1 to 2 or 3 feet expected by 2050 across all breeding regions, and 3 to 5 or 6 feet expected by 2080 across all breeding regions, depending on whether the intermediate or high sea level rise scenario is considered. While sea level rise projections may be similar throughout the wood stork's range, impacts to wood stork resiliency are expected to be most pronounced in the Northeast Breeding Region, as it is in closer proximity to the coastline when compared to the other breeding regions. Tidal freshwater marshes will shift and possibly decline in size as saltwater intrudes and brackish marshes migrate inland to replace them. Some currently occupied wood stork habitat will be lost as sea level rises, but new habitat may also become available. Given the wood stork's tendency to shift both geographically and behaviorally in order to take advantage of optimum breeding and foraging conditions, and the abundance of unoccupied suitable habitat that still exists in this region, it is likely that the Northeast Breeding Region will remain sufficiently resilient, and a valuable and productive part of the wood stork's distribution into the future. As such, despite changes to habitat that result from sea level rise, we do not expect individuals in this breeding region to be in danger of extinction now or in the foreseeable future.

Models project that urbanization and land conversion will continue to occur into the future across the range of the wood stork, and impacts will be relatively evenly distributed among breeding regions. Specifically, the urbanization model projects that under the worst-case future scenarios and over the longest timeframe (to 2080), developed areas within the core foraging areas will increase by a maximum of 10 to 14 percentage points depending on the breeding region (*i.e.,* increasing from 18 to 30 percent in the South Breeding Region, from 25 to 39 percent in the Central Breeding Region, from 8 to 22 percent in the Northwest Breeding Region, and from 11 to 21 percent in the Northeast Breeding Region). As such, no one area of the wood stork's range will be impacted significantly more by urbanization than any other. Regulatory and voluntary conservation efforts that help mitigate the impacts of urbanization are also well distributed across the range of the wood stork, and multiple examples of ongoing efforts in all four breeding regions can be found in the SSA report (Service 2021, chapter 5.1.4).

In general, while the degree to which threats such as sea level rise and urbanization will impact the wood stork varies to some extent at different locations, the populations within the various locations are stable or increasing, and we project these trends to continue in the foreseeable future. Additionally, the Southeast U.S. DPS of the wood stork consists of a single, genetically undifferentiated population where a proportion of the individuals move between and among breeding colonies and breeding regions, both inter- and intra-annually. The fluid nature of the wood stork population across its range means that even if certain colony sites or geographical areas experience an increase in exposure to a certain threat at a given time and location, the movement of individuals among colony sites throughout the range would prevent any one group of individuals from being disproportionately affected.

We found no portion of the wood stork's range where threats are impacting individuals differently from how they are affecting individuals elsewhere in its range, such that the status of the wood stork in that portion differs from its status in any other portion of its range. Therefore, we find that the wood stork is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014), including the definition of ''significant'' that those court decisions held to be invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Southeast U.S. DPS of the wood stork does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. In accordance with our regulations at 50 CFR 424.11(e)(2) currently in effect, the Southeast U.S. DPS of the wood stork does not meet the definition of an endangered or a threatened species. Therefore, we propose to remove the Southeast U.S. DPS of the wood stork from the Federal List of Endangered and Threatened Wildlife.

Effects of This Proposed Rule

This proposal, if made final, would revise 50 CFR 17.11(h) by removing the Southeast U.S. DPS of the wood stork from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this DPS. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the wood stork. There is no critical habitat designated for the wood stork, so there would be no effect to 50 CFR 17.95.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species (which includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature; see 16 U.S.C. 1532(16)) that have been delisted due to recovery. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

Section 4(g) of the Act explicitly requires that we cooperate with the

States in development and implementation of PDM programs. However, we remain ultimately responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting.

We will coordinate with other Federal agencies, State resource agencies, interested scientific organizations, and others as appropriate to develop and implement an effective PDM plan for the wood stork. The PDM plan will build upon current research and effective management practices that have improved the status of the wood stork since listing. Ensuring continued implementation of proven management strategies that have been developed to sustain the wood stork will be a fundamental goal for the PDM plan. The PDM plan will identify measurable management thresholds and responses for detecting and reacting to significant changes in wood stork numbers, distribution, and persistence. If declines are detected equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines. The investigation will be to determine if the wood stork warrants expanded monitoring, additional research, additional habitat protection, or resumption of Federal protection under the Act. We will draft the PDM plan and will notify the public on our website, *https://www.fws.gov/office/florida-ecological-services,* when it is available. Copies will also be available from the U.S. Fish and Wildlife Service, Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**, above). We anticipate finalizing a PDM plan at the time of making a final determination on this proposed delisting rule.

Required Determinations

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:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

On June 20, 2019, the Service published in the **Federal Register** (84 FR 28850) a notice of initiation of a 5-year review for the U.S. breeding population of the wood stork and requested new information that could have a bearing on the status of this DPS. On November 21, 2019, the Service informed the affected Tribes that we had initiated the SSA process, and we invited them to participate in the development of the wood stork SSA. On February 1, 2021, the Service contacted the affected Tribes with an opportunity to review the draft SSA report. We will continue to work with Tribal entities during the development of a final listing determination for the wood stork.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Florida Ecological Services Office.

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.

§ 17.11 [Amended]

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by removing the entry for ''Stork, wood [Southeast U.S. DPS]'' under ''Birds''.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–03123 Filed 2–14–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 31
Wednesday, February 15, 2023

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Identifying and Reducing Burdens in Administrative Processes; Request for Comments

AGENCY: Administrative Conference of the United States (ACUS).

ACTION: Notice; request for comments.

SUMMARY: The Office of the Chairman of ACUS is requesting public input on how agencies can identify and reduce unnecessary procedural burdens that members of the public face when they engage with administrative programs or participate in administrative processes. Responses to this request may inform an ongoing ACUS project, *Identifying and Reducing Burdens in Administrative Processes,* which, if warranted, will recommend best practices for agencies to use.

DATES: Comments must be received no later than 10 a.m. (ET) April 17, 2023.

ADDRESSES: You may submit comments by email to *info@acus.gov* (with ''Identifying and Reducing Burdens in Administrative Processes'' in the subject line of the message), online by clicking ''Submit a comment'' near the bottom of the project web page found at *https://www.acus.gov/research-projects/disclosure-agency-legal-materials,* or by U.S. Mail addressed to Identifying and Reducing Burdens in Administrative Processes, Administrative Conference of the United States, 1120 20th Street NW, Suite 706 South, Washington, DC 20036. ACUS will ordinarily post comments on the project web page as they are received. Commenters should not include information, such as personal information or confidential business information, that they do not wish to appear on the ACUS website. For the full ACUS public comment policy, please visit *https://www.acus.gov/policy/public-comment-policy.*

FOR FURTHER INFORMATION CONTACT: Matthew Gluth, Attorney Advisor, Administrative Conference of the United States, 1120 20th Street NW, Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080; email *mgluth@acus.gov.*

SUPPLEMENTARY INFORMATION:

The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.*

Identifying and Reducing Burdens in Administrative Processes

Congress and the White House have, over the past three decades, directed agencies to design and manage public-facing processes to account for the needs of public participants. Statutes, executive orders, and Office of Management and Budget guidance identify methods for identifying unnecessary administrative burdens (*e.g.,* use of surveys, focus groups, user testing, data analysis) and strategies for reducing them (*e.g.,* streamlining processes, simplifying forms, digitizing services, improving public communications). This focus on identifying and reducing administrative burdens is often called ''customer service'' or ''customer experience'' because it borrows from similar practices used by private-sector organizations.[1]

Agencies are increasingly using customer service methods to identify and reduce unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes. A growing academic literature also analyzes how public institutions can use customer service methods to improve the programs they administer, and participants at two recent ACUS forums also discussed promising practices for identifying and reducing administrative burdens.[2]

ACUS has adopted many recommendations urging agencies to use specific customer service methods in certain circumstances. It has recommended, for example, that agencies seek public input on practices for engaging with the public during rulemakings; [3] design and manage *Regulations.gov* to ''meet user needs;'' [4] solicit public feedback on appellate systems, hearing practices, and guidance websites; [5] collect anonymous feedback to assess participants' satisfaction with virtual hearings; [6] gather data on the experiences of self-represented parties and users of electronic case management systems; [7]

[1] 21st Century Integrated Digital Experience Act, Public Law 115–336 (2018); Exec. Order No 14058, *TransformingFederal Customer Experience and Service Delivery To Rebuild Trust in Government,* 86 FR 71357 (Dec. 16, 2021); Exec. Order No. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* 86 FR 7009 (Jan. 25, 2021); Exec. Order No. 13707, *Using Behavioral Science Insights To Better Serve the American People,* 80 FR 56365 (Sept. 18, 2015); Exec. Order. No. 13571, *Streamlining* Service Delivery and Improving Customer Service, 76 FR 24339 (Apr. 27, 2011); Exec. Order No. 12862, *Setting Customer Service Standards,* 58 FR 48257 (Sept. 14, 1993); Off. of Mgmt. & Budget, *Improving Access to Public Benefits Through the Paperwork Reduction Act,* M–22–10 (Apr. 13, 2022); see also Off. of Mgmt. & Budget, Study to Identify Methods to Assess Equity: Report to the President (2021).

[2] Admin. Conf. of the U.S., Forum on Enhancing Public Input in Agency Rulemaking (Dec. 1, 2021); Admin. Conf. of the U.S., Forum on Underserved Communities and the Regulatory Process (Nov. 3–29, 2021).

[3] Admin. Conf. of the U.S., Recommendation 2020–1, *Rules on Rulemakings,* ¶ 5, 86 FR 6613, 6613 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 2018–7, *Public Engagement in Rulemaking,* ¶ 4, 84 FR 2146, 2148 (Feb. 6, 2019).

[4] Admin. Conf. of the U.S., Recommendation 2018–6, *Improving Access to Regulations.gov's Rulemaking Dockets,* ¶ 1, 84 FR 2143, 2145 (Feb. 6, 2019).

[5] Admin. Conf. of the U.S., Recommendation 2020–3, *Agency Appellate Systems,* ¶ 25, 86 FR 6618, 6620 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 2016–4, *Evidentiary Hearings Not Required by the Administrative Procedure Act,* ¶ 31, 81 FR 94314, 94316 (Dec. 23, 2016); Admin. Conf. of the U.S. Recommendation 2019–3, *Public Availability of Agency Guidance Documents,* ¶ 6, 84 FR 38931, 38932 (Aug. 8, 2019).

[6] Admin. Conf. of the U.S., Recommendation 2021–4, *Virtual Hearings in Agency Adjudication,* ¶ 14, 86 FR 36083, 36085 (July 8, 2021); see also Admin. Conf. of the U.S., Recommendation 2014–7, *Best Practices for Using Video Teleconferencing for Hearings,* ¶ 12, 79 FR 75114, 75120 (Dec. 17, 2014).

[7] Admin. Conf. of the U.S., Recommendation 2016–6, *Self-Represented Parties in Administrative Proceedings,* ¶ 4, 81 FR 94319, 94320 (Dec. 23, 2016); Admin. Conf. of the U.S. Recommendation 2018–3, *Electronic Case Management in Federal Administrative Adjudication,* ¶ 4f, 83 FR 30686, 30687 (June 29, 2018).

and use quality assurance to identify systemic barriers to participation in adjudicatory proceedings.[8]

ACUS is undertaking this project to examine more comprehensively how agencies are using and might better use customer service methods to improve administrative programs and procedures. A team of leading scholars will submit a report to ACUS that will examine methods, such as public engagement and data analysis, that agencies can use to identify unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes. The project will also assess strategies for reducing unnecessary burdens, such as streamlining processes and digitizing services. Based on this research, a committee of ACUS members will develop proposed recommendations to agencies of best practices for possible consideration by the ACUS Assembly. Visit *https://www.acus.gov/research-projects* to learn more about how ACUS develops recommendations.

Specific Topics for Public Comment

ACUS welcomes views, information, and data on all aspects of strategies that agencies are using or might use to identify and reduce unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes. ACUS also seeks specific feedback on the following questions related to agencies' burden-reduction efforts:

1. What has been your experience interacting with an agency regarding a benefit or service that you are applying for or renewing, for example unemployment insurance or student loan assistance? Was any portion of the process especially easy or particularly difficult? Do you have specific suggestions for reducing burdens?

2. What has been your experience trying to use a government benefit or service that you are receiving? For example, how easy or difficult is it to use your food stamps, Medicaid health insurance, or Medicare health insurance? Do you have specific suggestions for reducing burdens in programs with which you have interacted?

3. Have you experienced any unintended consequences from agencies' burden-reduction efforts? For example, have an agency's attempts to reduce one burden created others, either for members of the public or for agency officials?

4. Are you aware of specific, temporary burden reductions instituted during the COVID–19 pandemic that you believe should be made permanent? This can include (and please specify, if possible) burden-reduction efforts that agencies can implement under current statutes as well as those that would require statutory changes.

5. Are there existing legal impediments that have slowed or stopped efforts to identify or reduce burdens? If so, please describe examples, especially those that you believe would have the greatest burden-reduction impact.

6. What has been your experience regarding collaborations between agencies and other public- and private-sector organizations when trying to reduce burdens. Please describe whether these collaborations were successful and describe any factors (*e.g.,* statutory, organizational, other) that either enhanced or impeded the collaboration.

7. What role can private-sector groups play in helping to reduce burdens, and how can government agencies encourage such actions? For example, how might regulations on access and sharing of personal financial data be structured to encourage private-sector groups to provide tools to reduce burdens that members of the public experience when they apply for, engage with, or participate in federal programs?

Dated: February 9, 2023.

Shawne McGibbon,

General Counsel.

[FR Doc. 2023–03181 Filed 2–14–23; 8:45 am]

BILLING CODE 6110–01–P

[8] Admin. Conf. of the U.S., Recommendation 2021–10, *Quality Assurance Systems in Agency Adjudication,* 87 FR 1722 (Jan. 12, 2022).

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0001]

Notice of Request for Extension of Approval of an Information Collection; Export Health Certificate for Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the export of animal products from the United States.

DATES: We will consider all comments that we receive on or before April 17, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0001 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0001, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the export of animal products from the United States, contact Dr. Katrina Fox, DVM, Animal Products Import and Export, Strategy & Policy, Veterinary Services, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3083; *katrina.fox@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Health Certificate for Animal Products.

OMB Control Number: 0579–0256.

Type of Request: Extension of approval of an information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and animal products, U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States. The regulations for export certification of animals and animal products are contained in 9 CFR parts 91 and 156.

Many countries that import animal products from the United States require a certification from APHIS that the United States is free of certain diseases. They may also require that our certification statement contain additional declarations regarding the U.S. animal products being exported. This certification must carry the USDA seal and be endorsed by an APHIS representative (*e.g.,* a Veterinary Medical Officer). The certification process involves the use of information collection activities including an animal products export certificate and request for a hearing. An exporter may request a hearing to appeal an APHIS Veterinary Services (VS) decision not to grant a certificate because an exporter is not meeting certain requirements in part 156 of the regulations or if a certificate is denied or withdrawn by VS if it is determined that an issued certificate has been altered or parts imitated.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.32 hours per response.

Respondents: Exporters of U.S. animal products.

Estimated annual number of respondents: 32,687.

Estimated annual number of responses per respondent: 5.5.

Estimated annual number of responses: 179,318.

Estimated total annual burden on respondents: 58,165 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of February 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–03137 Filed 2–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0028]

Addition of the Kingdom of Thailand and the Republic of North Macedonia to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we added the Kingdom of Thailand and the Republic of North Macedonia to the list of regions that the Animal and Plant Health Inspection Service considers to be affected by African swine fever (ASF). We have taken these actions because of confirmation of ASF in the Kingdom of Thailand and the Republic of North Macedonia.

DATES: The Kingdom of Thailand and the Republic of North Macedonia were added to the list of regions APHIS considers to be affected with ASF, effective respectively on January 20, 2022, and February 3, 2022.

FOR FURTHER INFORMATION CONTACT: For further information regarding ASF in the Kingdom of Thailand and the Republic of North Macedonia, contact Dr. John Grabau, Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, APHIS, 920 Main Campus Drive, Venture II, Raleigh, NC 27606; phone: (919) 855–7225; email: *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/.* This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (WOAH),[1] or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8, except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On January 14, 2022, the veterinary authorities of the Kingdom of Thailand reported to the WOAH an ASF occurrence in that country. On January 20, 2022, in response to the outbreak, APHIS added the Kingdom of Thailand to the list of regions where ASF exists or is reasonably believed to exist. As a result, pork and pork products from the Kingdom of Thailand, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

On January 10, 2022, the veterinary authorities of the Republic of North Macedonia reported to the WOAH an ASF occurrence in that country. On February 3, 2022, in response to the outbreak, APHIS added the Republic of North Macedonia to the list of regions where ASF exists or is reasonably believed to exist. As a result, pork and pork products from the Republic of North Macedonia, including casings, are

[1] The World Organization for Animal Health internationally follows a British English spelling of ''organisation'' in its name; it was formerly the Office International des Epizooties, or OIE, but on May 28, 2022, the Organization announced that the acronym was changed from OIE to WOAH.

subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

With the publication of this notice, we are informing the public that we added: The Kingdom of Thailand to the list of regions APHIS considers to be affected with ASF, effective January 20, 2022, and the Republic of North Macedonia to the list of regions APHIS considers to be affected with ASF, effective February 3, 2022. This notice serves as an official record and public notification of these actions.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 9th day of February 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–03134 Filed 2–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0074]

Notice of Decision to Authorize the Importation of Fresh Oha Leaves (Pterocarpus mildbraedii) From Nigeria Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation of fresh Oha leaves (*Pterocarpus mildbraedii*) from Nigeria into the continental United States. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh Oha leaves from Nigeria.

DATES: Imports may be authorized beginning February 15, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Hesham Abuelnaga, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2010; email: *Hesham.A.Abuelnaga@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of fruits and vegetables that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS proposes to authorize the importation of a fruit or vegetable into the United States if, based on findings of a pest risk analysis, we determine that the measures can mitigate the plant pest risk associated with the importation of that fruit or vegetable. APHIS then publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS will issue a subsequent **Federal Register** notice announcing whether or not we will authorize the importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

In accordance with that process, we published a notice [1] in the **Federal Register** on June 7, 2022 (87 FR 34632–34633, Docket No. APHIS–2021–0074), in which we announced the availability, for review and comment, of a pest risk analysis that evaluated the risks associated with the importation of fresh Oha leaves (*Pterocarpus mildbraedii*) from Nigeria into the continental United States. The pest risk analysis consisted of a risk assessment identifying pests of quarantine significance that could follow the pathway of the importation of fresh Oha leaves from Nigeria into the continental United States and a risk management document identifying phytosanitary measures to be applied to that commodity to mitigate the pest risk.

We solicited comments on the notice for 60 days ending on August 8, 2022. We received no comments by that date.

Therefore, in accordance with § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation of fresh Oha leaves from Nigeria into the continental United States subject to the phytosanitary measures identified in the risk management document that accompanied the initial notice.

These conditions will be listed in the USDA, APHIS Agricultural Commodity Import Requirements (ACIR) database (*https://acir.aphis.usda.gov/s/*).[2] In addition to these specific measures, each shipment must be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the recordkeeping and burden requirements associated with this action are included under the Office of Management and Budget (OMB) control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E- Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

[1] To view the notice, the pest risk analysis, and other supporting documents, go to *www.regulations.gov.* Enter APHIS–2021–0074 in the Search field.

[2] On September 30, 2022, the APHIS Fruits and Vegetables Import Requirements (FAVIR) database was replaced by the ACIR database.

Done in Washington, DC, this 9th day of February 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–03136 Filed 2–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0016]

Notice of Decision To Authorize the Importation of Fresh Mango (Mangifera indica L.) Fruit From Grenada Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the United States of fresh mango (*Mangifera indica L.*) fruit from Grenada. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh mango (*Mangifera indica L.*) fruit from Grenada.

DATES: Imports may be authorized beginning February 15, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2114; *Marc.Phillips@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS proposes to authorize the importation of a fruit or vegetable into the United States if, based on findings of a pest risk analysis, we determine that the measures can mitigate the plant pest risk associated with the importation of that fruit or vegetable. APHIS then publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS will issue a subsequent **Federal Register** notice announcing whether or not we will authorize the importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

In accordance with that process, we published a notice [1] in the **Federal Register** on September 9, 2021 (86 FR 50524, Docket No. APHIS–2021–0016), in which we announced the availability, for review and comment, of a pest risk analysis that evaluated the risks associated with the importation of fresh mango (*Mangifera indica L.*) fruit from Grenada into the United States. The pest risk analysis consisted of a risk assessment identifying pests of quarantine significance that could follow the pathway of importation of fresh mango (*Mangifera indica L.*) fruit from Grenada into the United States and a commodity import evaluation document (CIED) identifying phytosanitary measures to be applied to that commodity to mitigate the pest risk.

We solicited comments on the notice for 60 days ending on November 8, 2021. We received one comment by that date, and it was favorable.

Therefore, in accordance with the regulations in § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation of fresh mango (*Mangifera indica L.*) fruit from Grenada into the United States subject to the phytosanitary measures identified in the CIED that accompanied the initial notice.

These conditions will be listed in the USDA, APHIS Agricultural Commodity Import Requirements (ACIR) database (*https://acir.aphis.usda.gov/s/*).[2] In addition to these specific measures, each shipment must be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the recordkeeping and burden requirements associated with this action are included under the Office of Management and Budget (OMB) control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of February 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–03133 Filed 2–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2023–0002]

Information Collection Request; Inventory Property Management

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an extension with a revision of a current information collection request for Inventory Property Management. For Inventory Property Management, the collected information is used to evaluate applicant requests to purchase inventory property, determine eligibility to lease or purchase inventory property,

[1] To view the notice, the pest risk analysis, other supporting documents, and the comment we received, go to *www.regulations.gov.* Enter APHIS–2021–0016 in the Search field.

[2] On September 30, 2022, the APHIS Fruits and Vegetables Import Requirements (FAVIR) database was replaced by the ACIR database.

and ensure the payment of the lease amount or purchase amount associated with the acquisition of inventory property.

DATES: We will consider comments that we receive by April 17, 2023.

ADDRESSES: We invite you to submit comments on the notice. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://regulations.gov* and search for docket ID FSA–2023–0002. Follow the online instructions for submitting comments.
- *Mail:* Lee Nault, Loan Servicing and Properties Management Division, USDA, FSA, Farm Loan Programs, 1400 Independence Ave. SW, Mail Stop 0523, Washington, DC 20250–00523.

Comments will be available for inspection online at *http://www.regulations.gov.* Copies of the information collection may be requested by contacting Lee Nault (see **FOR FURTHER INFORMATION CONTACT** below). You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lee Nault, (202) 720–6834; email: *Lee.Nault@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Description of Information Collection Request

Title: Inventory Property Management.

OMB Number: 0560–0234.

Expiration Date of Approval: 06/30/2023.

Type of Request: Revision.

Abstract: FSA's Farm Loan Programs provide supervised credit in the form of loans to family farmers to purchase real estate and equipment and finance agricultural production. Inventory Property Management, as specified in 7 CFR part 767, provides the requirements for the management, lease, and sale of security property acquired by FSA. FSA may take title to real estate as part of dealing with a problem loan either by entering a winning bid to protect its interest at a foreclosure sale, or by accepting a deed of conveyance in lieu of foreclosure. Information collections established in the regulation are necessary for FSA to determine an applicant's eligibility to lease or purchase inventory property and to ensure the applicant's ability to make payment on the lease or purchase amount.

The number of responses and burden hours decreased by 79 and 46, respectively. While the overall number of inventory properties on hand increased 4.76% from the last collection, the decrease in responses and burden hours is due to a reduction in the estimated number of inventory properties that will be sold annually. The number projected to be sold has been revised downward due to the current suspension of foreclosures for direct FLP loans and anticipated significantly decreased rate at which new properties are acquired by FSA. Additionally, sales are managed in order to not flood the market and usage of forms should stay consistent.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual responses.

Estimate of Average Time to Respond: Public reporting burden for this collection of information is estimated to average 0.56 hours per response.

Type of Respondents: Individuals or households, business, or other for-profit farms.

Estimated Annual Number of Respondents: 160.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 160.

Estimated Average Time per Responses: 0.56 hours.

Estimated Total Annual Burden on Respondents: 90 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including names and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2023–03211 Filed 2–14–23; 8:45 am]

BILLING CODE 3411–25–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Special Use Administration

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension (with no revision) of a currently approved information collection, Standard Form–299 (SF–299) Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property.

DATES: Comments must be received in writing on or before April 17, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to USDA Forest Service, Attention: Lands—Special Uses, 1400 Independence Avenue SW, Stop 1124, Washington, DC 20250–1124. Comments also may be submitted via facsimile to 202–644–4700 or by email to *reply_lands_staff@usda.gov.* All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may review comments on the Forest Service forms *web page at https://www.fs.usda.gov/managing-land/lands-realty-management/forms.* Comments will be summarized in the Forest Service's request for Office of Management and Budget approval of the information collection for special uses and will be addressed in a **Federal Register** Notice of the final revisions to the approved information collection.

FOR FURTHER INFORMATION CONTACT: Mark Chandler, Realty Specialist, Lands, National Forest Systems can be reached by phone at 202–205–1117, or by email at *mark.chandler@usda.gov.* Individuals who use telecommunication devices for the deaf and hard of hearing (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:

Title: SF–299 Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property.

OMB Number: 0596–0249.

Expiration Date of Approval: February 28, 2023.

Type of Request: Extension with no Revision of SF–299, Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property, into a common form.

Abstract: Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) contains provisions directing the Administrator of the General Services Administration to develop a common form for applications for easements and rights-of-way for all executive agencies that shall be used by applicants with respect to the buildings or other property of each such agency. On June 14, 2012, the President signed Executive Order 13616, ''Accelerating Broadband Infrastructure Deployment''. Section 4 of Executive Order 13616 directed the General Services Administration (GSA) to develop and use one or more templates for uniform contract, application, and permit terms to facilitate nongovernment entities' use of Federal property for the deployment of broadband facilities. GSA created a Common Form Applications (GSA 3729). On January 8, 2018, the President signed Executive Order 13821, ''Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America,'' which directed GSA to (1) evaluate the effectiveness of the GSA Common Form Application and (2) determine whether any revisions to the GSA Common Form Application were appropriate. GSA completed their evaluation of the use of the Common Form Application and determined that all other land management agencies were utilizing the SF–299 and not the Common Form Application. To ensure a coordinated and consistent approach across all agencies' GSA determined that with minor modifications, the SF–299 would serve as the standard application form for all agencies. The information collection requirements are necessary for the Forest Service to issue and administer special use authorizations that allow the public to use and occupy of National Forest System (NFS) lands under these authorities. The information collected is used by Forest Service officials (unless otherwise noted) to ensure that uses of NFS lands are authorized, in the public interest, and compatible with the Agency's mission; and/or record authorization of use granted by appropriate Forest Service officials.

The Department of the Interior (DOI) statutes that authorize the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS), and Bureau of Reclamation (BOR), along with the statutes for the U.S. Army Corp of Engineers (USACE), and the General Services Administration (GSA) authorize their collection of information utilizing form SF–299 ''Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property.''

Several statutes authorize the Forest Service to issue and administer authorizations for use and occupancy of NFS lands and collect information from the public for those purposes. The laws authorizing the collection of this information include the Organic Administration Act of 1897 (16 U.S.C. 551); Title V of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1761–1771); Act of March 4, 1915 (16 U.S.C. 497); Alaska Term Permit Act of March 30, 1948 (16 U.S.C. 497a); Act of September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c, 931d); National Forest Ski Area Permit Act (16 U.S.C. 497b); section 28 of the Mineral Leasing Act (30 U.S.C. 185); National Forest Roads and Trails Act (FRTA, 16 U.S.C. 532–538); section 7 of the Granger-Thye Act (16 U.S.C. 580d); Act of May 26, 2000 (16 U.S.C. 460l–6d); Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814); Archeological Resource Protection Act of October 31, 1979 (16 U.S.C. 470aa–470mm); and the Rural Electrification Act of 1936, as amended.

Forest Service regulations implementing these authorities, found at 36 CFR part 251, subpart B, contain information collection requirements, including submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements, such as the requirement to submit annual financial information, to prepare and update an operating plan; to prepare and update a maintenance plan, and to submit compliance reports and information updates.

The information helps the Forest Service identify the environmental and social impacts of special uses for purposes of compliance with the National Environmental Policy Act and program administration.

Information collection occurs via application forms, as well as terms and conditions in special use authorizations and operating plans. Information is required from proponents and applicants to evaluate proposals and applications to use or occupy NFS lands.

Special use authorizations encompass a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized special uses include public and private road rights-of-way, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, communications facilities, hydroelectric power-generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds.

SF–299, Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property, is used to evaluate the applicant's technical and financial capability, nature of the proposed operations, and anticipated environmental impacts and proposed mitigation of those impacts. This form is used for most non-recreational NFS lands use requests. This form will also be used by the Department of the Interior's BLM, FWS, NPS, BOR, the USACE and GSA, to grant, issue, or renew rights-of-way (ROW) to use a specific piece of public land for a certain project.

Compliance Reports and Information Updates

Forest Service

Estimated Annual Burden: 8 burden hours per response.

Type of Respondents: Individuals, Businesses, Non-profit Organizations, and Non-Federal Governmental entities.

Estimated Annual Number of Respondents: 2,463 respondents.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: February 1, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–03209 Filed 2–14–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Friday, March 10, 2023 at 12:00 p.m.–1:00 p.m. Central time. To orient Iowa to begin brainstorming potential civil rights topics for their study of the 2021–2025 term.

DATES: The meeting will take place on Friday, March 10, 2023 from 12 p.m.–1 p.m. Central time.

Join ZoomGov Meeting: https://www.zoomgov.com/j/1615882945

Telephone (Audio Only): Dial 833 435 1820 USA Toll Free; Access code: 161 588 2945

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome From Iowa Advisory Committee Chair
II. Introductions
III. Administrative Announcements
IV. Discuss Civil Rights Topics
V. Public Comment
VI. Discuss Next Steps
VII. Adjournment

Dated: February 10, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–03202 Filed 2–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Global Diversity Export Initiative (GDEI) Business Mission to South Africa, Ghana, and Optional Stop in Nigeria, August 6–15, 2023. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.* For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed

under the name of a U.S. firm and have at least 51% U.S. content.

A trade association/organization applicant must certify to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.
- ITA seeks to ensure that the trade mission represents a diverse swathe of U.S. businesses seeking to export. Considerations when reviewing applications will include: size of the company represented; volume and/or value of the company's current exports.

Balance of applicants' location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas. Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/*. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small- or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

Important Note About the COVID–19 Pandemic

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees accordingly, prepare an agenda for virtual activities, a and notify the previously selected applicants with the option to opt-in to the new virtual program.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Global Diversity Export Initiative (GDEI) Business Mission to South Africa, Ghana, and Optional Stop in Nigeria, August 6–15, 2023

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Global Diversity Export Initiative (GDEI) Business Trade Mission to South Africa and Ghana with an optional stop in Nigeria from August 6–15, 2023. The timing of this mission is subject to change based on the confirmed dates of the African Growth and Opportunity Act (AGOA) Forum that is slated to take place in Johannesburg, South Africa, in August 2023. The mission will focus on building commercial bridges between U.S. businesses with owners and/or leaders from underserved communities (''underserved businesses'' or

''businesses from underserved communities'') with business communities in the target countries. The target participants will be businesses in the automotive, information and communication technology, safety and security, and consumer goods (*i.e.,* cosmetic, toiletries, haircare, etc.) industries.

Recruitment and consideration will be extended to all export-ready companies that meet the established criteria for participation in the mission. ITA is seeking to improve outreach and representation of businesses with owners and/or leaders from underserved communities. This mission is in alignment with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 25, 2021) (E.O. 13985), the U.S. Department of Commerce Equity Action Plan, and the Global Diversity Export Initiative of the U.S. Commercial Service. For the purposes of the trade mission, ITA adopts the definition of ''underserved communities'' in E.O. 13985: ''populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of 'equity.' '' ''Equity'' is defined by E.O. 13985 as ''the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.'' This trade mission is also designed to be responsive to the priorities stated by Secretary of Commerce Gina Raimondo and outlined in the Equity Action Plan released in April 2022 which includes ''[s]trengthen[ing] small businesses in underserved communities by helping them be successful exporters''.

In addition to publishing notice of the trade mission in the **Federal Register**, ITA is committed to outreach and recruitment through collaboration with organizations with ties to underserved communities. Federal agencies that will help to support recruitment for this mission include the U.S. Export-Import Bank and the Minority Business Development Agency.

The mission will begin in Johannesburg, South Africa where delegates will participate in pre-arranged business to business (B2B) meetings with potential partners and customers and in market briefings with speakers from South Africa and surrounding countries. The market briefings will be an opportunity for mission participants to network and to gain a deeper understanding of the opportunities in the region. The market briefings will include Officers and Locally Employed Specialists from surrounding countries. Mission participants from the automotive industry have an optional site visit to a local automotive original equipment manufacturer (OEM). The mission will spend 2.5 days in South Africa. If the timing of the mission takes place alongside the anticipated AGOA Forum, participants could potentially spend extra time in South Africa to take advantage of the market briefings and networking opportunities associated with the Forum.

After South Africa, the mission will proceed to Ghana in West Africa. In Ghana, mission participants will have the opportunity to participate in pre-arranged B2B meetings with potential partners and customers as well as a potential site visit to a manufacturing facility. Given recent government regulations imposing additional tariffs on automotive imports, this sector is no longer considered viable for American automotive exporters. Companies involved in ICT and Safety & Security will be better situated for B2B meetings in Ghana.

After Ghana, mission participants have the option to proceed to the optional stop in Nigeria for two days after a weekend break. In Nigeria, participants will have B2B meetings with potential partners and customers. This stop will be optional as some of the target sectors for this mission face foreign exchange barriers making it difficult to enter and compete in the Nigerian market. It is noted that some consumer goods, including textiles and cosmetics/toiletries, are among the products that face this difficulty.[1] The mission will conclude in Nigeria.

Proposed Timetable

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation. This timetable is subject to change once the confirmed dates for the AGOA Forum in August 2023 are announced.

Sunday August 6, 2023	• Trade Mission Participants Arrive in South Africa. • Welcome Reception.
Monday August 7, 2023	• Regional Market Briefings—AM. • B2B Matchmaking Meetings—PM.
Tuesday August 8, 2023	• B2B Matchmaking Meetings Continue AM/PM. • Optional site visits to manufacturing facilities PM.
Wednesday August 9, 2023	• Travel day to Ghana.
Thursday August 10, 2023	• B2B meetings AM/PM. • Welcome Reception PM.
Friday August 11, 2023	• B2B Matchmaking Meetings Continue AM. • Optional site visits to manufacturing facilities PM.
Saturday & Sunday August 12–13, 2023.	• Weekend in Ghana and depart for Nigeria for optional stop in Lagos.
August 14, 2023	• B2B Matchmaking Meetings AM/PM. • Welcome Luncheon or Dinner.
August 15, 2023	• B2B Matchmaking Meetings AM/PM. • Trade Mission concludes.

[1] *https://www.pulse.ng/business/cbn-fx-restriction-list-wheat-sugar-importation-ban/m45743k.*

Participation Requirements

All parties interested in participating in the trade mission must submit an application package for consideration by the U.S. Department of Commerce (DOC). All applicants will be evaluated on their ability to meet the criteria as outlined above. A minimum of 20 participants will be selected for South Africa and Ghana, and 8 for the optional stop in Nigeria. The total number of participants will not exceed 30.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the GDEI Business Development Trade Mission will be $3,725 for small or medium-sized enterprises (SME) [2] and trade organizations for South Africa and Ghana stops and $5,720 for all three stops and $6,520 for South Africa and Ghana stops and $10,300 for all three stops for large firms. The fee for each additional firm representative (large firm or SME/trade organization) is $800 for SMEs and $1,300 for large companies. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations/organizations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than May 31, 2023. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after May 31, 2023, will be considered only if space and scheduling constraints permit.

Contacts

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Gemal Brangman,

Director, ITA Events Management Task Force.

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[2] For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation Co., Ltd., and Xinjiang Fufeng Biotechnologies Co., Ltd. (collectively, Fufeng) sold xanthan gum from the People's Republic of China (China) at less than normal value during the period of review (POR), July 1, 2020, through June 30, 2021. Additionally, we find that Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. (collectively, Meihua), Jianlong Biotechnology Co., Ltd. (formerly, Inner Mongolia Jianlong Biochemical Co., Ltd) (Jianlong), and Deosen Biochemical (Ordos) Ltd., Deosen Biochemical Ltd. (collectively, Deosen) have each demonstrated that they are eligible for a separate rate. Additionally, Commerce determines that a company for which we initiated a review had no shipments during the POR.

DATES: Applicable February 15, 2023.

FOR FURTHER INFORMATION CONTACT: Reginald Anadio, 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) 482–3166.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment on

those results.[1] Commerce extended the deadline for the final results by 60 days until February 1, 2023.[2] For details regarding the events that occurred subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [4]

The product covered by the *Order* includes dry xanthan gum, whether or not coated or blended with other products. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is provided in the appendix to this notice. 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.*

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that Shanghai Smart Chemicals Co. Ltd. did not have shipments of subject merchandise during the POR.[5] As we received no information to contradict our preliminary determination with respect to Shanghai Smart Chemicals Co. Ltd., we continue to find that it made no shipments of subject merchandise to the United States during the POR.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin calculation for Fufeng and three other companies/company groups listed below.[6]

Separate Rates

No parties commented on our preliminary separate rate determination. Therefore, we have continued to grant Fufeng (the sole mandatory respondent) and three other companies/company groups listed in the ''Final Results of Review'' section below separate rate status. However, we have continued to deny separate rate status to Nanotech Solutions SDN BHD.

Rate for Non-Examined Separate Rate Respondents

In the *Preliminary Results,* we determined that Meihua, Jianlong, and Deosen demonstrated their eligibility for a separate rate. We received no comment or argument since the issuance of the *Preliminary Results* that provide a basis for reconsideration of this determination. Therefore, for these final results, we continue to find that Meihua, Jianlong, and Deosen are eligible for a separate rate.

Final Results of Review

We are assigning the following dumping margins to the firms listed below for the period July 1, 2020, through June 30, 2021:

Exporter	Weighted-average dumping margins (percent)
Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd	17.36
Meihua Group International Trading (Hong Kong) Limited/Langfang Meihua Biotechnology Co., Ltd./Xinjiang Meihua Amino Acid Co., Ltd	17.36
Jianlong Biotechnology Co., Ltd. (formerly, Inner Mongolia Jianlong Biochemical Co., Ltd)	17.36
Deosen Biochemical (Ordos) Ltd./Deosen Biochemical Ltd	17.36

Disclosure

Pursuant to 19 CFR 351.224(b), within five days of the publication of this notice in the **Federal Register**, we will disclose to the parties to this proceeding, the calculations that we performed for these final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For Fufeng, Commerce will calculate importer-specific assessment rates for antidumping duties, in accordance with 19 CFR 351.212(b)(1). Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the merchandise sold to the importer.[7] Where the respondent did not report entered values, Commerce will calculate importer-specific assessment rates by dividing the amount of dumping for reviewed sales to the imported by the total quantity of those sales. Commerce will calculate an

[1] *See Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Partial Rescission of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2020–2021,* 87 FR 47970 (August 5, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Extension of Deadline for Final Results of the 2020–2021 Antidumping Duty Administrative Review,'' dated October 31, 2022.

[3] *See* Memorandum ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China,'' (Issues and Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[4] *See Xanthan Gum from the People's Republic of China: Amended Final Determination of Sales at less Than Fair Value and Antidumping Duty Order,* 78 FR 43143 (July 19, 2013) (*Order*).

[5] *See Preliminary Results.*

[6] *See* Issues and Decision Memorandum.

[7] *See* 19 CFR 351.212(b)(1).

estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis* (*i.e.,* 0.50 percent); however, Commerce will use the per-unit assessment rate where entered values were not reported.[8] Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de-minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.

For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the China-wide entity rate (*i.e.,* 154.07 percent).[9]

For respondents not individually examined in this administrative review that qualified for a separate rate (*i.e.,* Meihua, Jianlong, and Deosen), the assessment rate will be the dumping margin assigned to the sole mandatory respondent (*i.e.,* Fufeng) in the final results of this review.

For the respondents not eligible for a separate rate and that are part of the China-wide entity, we intend to instruct CBP to apply an *ad valorem* assessment rate of 154.07 percent (*i.e.,* the China-wide entity rate) to all entries of subject merchandise during the POR that were exported by these companies.

Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the China-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed in the table above, the cash deposit rate will be the rate established in the final results of review that is listed for the exporter in the table; (2) for previously investigated or reviewed China and non-China exporters not listed in the table above that have separate rates, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recent period; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate previously established for the China-wide entity, which is 154.07 percent; and (4) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. The cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing these final results of administrative review and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 1, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of Issues
Comment 1: Whether Commerce Should Directly Value Energy Factors of Production (FOP) in Its Normal Value (NV) Calculation
Comment 2: Whether Commerce Should Assign Facts Available for Fufeng's Supplier Distances
Comment 3: Whether Commerce Should Allow and Assign a Cap for Certain By-Products
Comment 4: Whether Commerce Should Correct Certain Clerical Errors in the *Preliminary Results*
Comment 5: Whether Commerce Should Modify its Calculation of Ocean Freight Surrogate Value (SV)
Comment 6: Whether Commerce Should Use Rani Transport Data Instead of World Bank's Doing Business Data for Calculating Truck Freight SV
Comment 7: Whether Commerce Should Not Deduct Section 301 Duties From the U.S. Price
Comment 8: Whether Commerce's Application of the Cohen's *d* Test is Unsupported by Substantial Evidence and Controlling Law
Comment 9: Whether Commerce Should Analyze Meihua's Voluntary Response and Provide a Calculation for Meihua
V. Recommendation

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BILLING CODE 3510–DS–P

[8] *Id.*

[9] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–874]

Certain Steel Nails From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines Daejin Steel Company (Daejin) and Korea Wire Co., Ltd. (KOWIRE), the producers and/or exporters subject to this administrative review, made sales of certain steel nails (steel nails) from the Republic of Korea (Korea) in the United States at prices below normal value (NV) during the period of review (POR), July 1, 2020, through June 30, 2021.

DATES: Applicable February 15, 2023.

FOR FURTHER INFORMATION CONTACT: Eva Kim and Reginald Anadio, 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) 482–8283 or (202) 482–3166, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2022, Commerce published the *Preliminary Results* of this administrative review and we invited interested parties to comment.[1] On October 31, 2022, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for issuing these final results until January 31, 2023.[2] A summary of the events that occurred since Commerce published the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.[3]

Scope of the Order [4]

The product covered by this *Order* is steel nails from Korea. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties' case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. 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.*

Changes Since the Preliminary Results

Based on comments received from interested parties regarding our *Preliminary Results* and our review of the record to address those comments, we made changes to the preliminary weighted-average dumping margin calculations for Daejin and KOWIRE, as detailed in the Issues and Decision Memorandum.[5]

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others rate, Commerce will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, Commerce's usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis,* or based entirely on facts available. For these final results, we have calculated dumping margins for the two mandatory respondents, Daejin and KOWIRE, that are above *de minimis* and not based on total facts available. Therefore, in accordance with section 735(c)(5)(A) of the Act, Commerce assigned to the companies not individually examined (*i.e.,* Je-il Wire Production Co., Ltd. and Koram Inc.), listed in the chart below, a margin of 2.64 percent which is the simple average of Daejin's and KOWIRE's calculated weighted-average dumping margins for these final results.[6]

Final Results of Review

As a result of this review, we determine the following weighted-average dumping margins exist for the POR:

Exporter or producer	Weighted-average dumping margin (percent)
Daejin Steel Company	4.52
Korea Wire Co., Ltd	0.75
Je-il Wire Production Co., Ltd	2.64
Koram Inc	2.64

Disclosure

Commerce intends to disclose the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review.[7] Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[8] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by

[1] *See Certain Steel Nails from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 47704 (August 4, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Extension of Deadline for Final Results of the 2020–2021 Antidumping Duty Administrative Review,'' dated October 31, 2022.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Certain Steel Nails from the Republic of Korea; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015) (*Order*).

[5] *See* Issues and Decision Memorandum at Comments 4, 5, 6, 10, and 11.

[6] Commerce was unable to compare a simple average to a weighted-average relative to publicly available data because public data for volume of U.S. sales were not available for respondents.

[7] *See* 19 CFR 351.212(b).

[8] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin that is established in the final results of this review; (2) for previously investigated or reviewed companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 11.80 percent *ad valorem,* the all-others rate established in the LTFV investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: January 31, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Issues

Daejin and KOWIRE

Comment 1: Whether Commerce's Differential Pricing Analysis Is Contrary to Widely Accepted Statistical Principles and Is Not Supported By Substantial Evidence

Daejin:

Comment 2: Whether Commerce Should Allocate Daejin's ''Taxes and Dues'' Entirely to General and Administrative (G&A) Expenses
Comment 3: Whether Commerce Should Include All of Daejin's Miscellaneous Losses in G&A Expenses Calculation of the G&A Expense Ratio
Comment 4: Whether Commerce Should Revise its Allocation of Miscellaneous Revenue and Depreciation Expenses Within G&A Expenses
Comment 5: Whether Commerce Should Apply Total Adverse Facts Available (AFA) For Daejin's Failure to Report Verifiable and Reliable Cost and Sales Data
Comment 6: Whether Commerce Should Apply Partial AFA to Daejin's Dumping Margin
Comment 7: Whether Commerce Should Clarify Certain Statements In Its Verification Report

KOWIRE:

Comment 8: Whether Commerce Should Find that KOWIRE Failed to Report Consistent Data and Apply AFA to KOWIRE
Comment 9: Whether Commerce Should Continue to Rely on the Cost Database Used in the *Preliminary Results*
Comment 10: Whether Commerce Should Revise the Inventory Carrying Cost Calculation
Comment 11: Whether Commerce Should Use KOWIRE's Submitted Entered Values to Calculate the Importer-Specific Assessment Rate

V. Recommendation

[FR Doc. 2023–03156 Filed 2–14–23; 8:45 am]

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[9] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–048, C–580–888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the People's Republic of China and the Republic of Korea: Continuation of Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the countervailing duty (CVD) orders on certain carbon and alloy steel cut-to-length plate (CTL plate) from the People's Republic of China (China) and the Republic of Korea (Korea) would likely lead to a continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these CVD orders.

DATES: Applicable February 15, 2023.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537.

SUPPLEMENTARY INFORMATION:

Background

On March 20 and May 25, 2017, respectively, Commerce published the CVD orders on CTL plate from China and Korea.[1] On December 1, 2021, Commerce initiated,[2] and the ITC instituted,[3] sunset reviews of the *Orders,* pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act). Commerce conducted expedited (120-day) sunset reviews of the *Orders,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(b) of the Act, that

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Countervailing Duty Order,* 82 FR 14346 (March 20, 2017); *see also Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order,* 82 FR 24103 (May 25, 2017) (collectively, *Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 68220 (December 1, 2021).

[3] *See Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey; Institution of Five-Year Reviews,* 86 FR 68269 (December 1, 2021).

revocation of the *Orders* would likely lead to continuation or recurrence of countervailable subsidies. Therefore, Commerce notified the ITC of the magnitude of the net countervailable subsidy rates likely to prevail should these *Orders* be revoked.[4]

On February 3, 2023, the ITC published its determinations, pursuant to section 751(c) of the Act, that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The product covered by the *Orders* is CTL plate. For complete descriptions of the scope of the *Orders, see* the appendix to this notice.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of countervailable subsidies, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.*

U.S. Customs and Border Protection will continue to collect CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise from China and Korea. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

[4] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 87 FR 17068 (March 25, 2022), and accompanying Issues and Decision Memorandum (IDM); *see also Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 87 FR 19070 (April 1, 2022), and accompanying IDM.

[5] *See Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, South Africa, South Korea, Taiwan, and Turkey,* 88 FR 7462 (February 3, 2023); *see also Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, South Africa, South Korea, Taiwan, and Turkey,* Investigation Nos. 701–TA–560–561 and 731–TA–1317–1328 (Review), USITC Pub. 5399 (January 2023).

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceedings. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(c) and (d)(2) and 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: February 9, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

CTL Plate From China

The products covered by this *Order* are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include: (1) universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief); and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this *Order* are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this *Order* unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this *Order:*

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual—or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this *Order;*

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350 HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75 ksi min and UTS 95 ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: a Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the *Order* may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0016, 7214.91.0020, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the *Order* is dispositive.

CTL Plate From Korea

The products covered by this *Order* are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include: (1) universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief); and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(8) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*i.e., Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Orders,* 81 FR 67960 (October 3, 2016)); and

(9) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this *Order* are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not

otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this *Order* unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this *Order:*

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual—or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this *Order;*

(10) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(11) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(12) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(13) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(14) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: a Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

At the time of the filing of the petition, there was an existing countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea,* 64 FR 73176 (December 29, 1999), as amended, 65 FR 6587 (February 10, 2000) (*1999 Korea CVD Order*). The scope of the countervailing duty order with regard to cut-to-length plate from Korea covers only (1) subject cut-to-length plate not within the physical description of cut-to-length carbon quality steel plate in the *1999 Korea CVD Order* regardless of producer or exporter; and (2) cut-to-length plate produced and/or exported by those companies that were excluded or revoked from the *1999 Korea CVD Order* as of April 8, 2016. The only revoked or excluded company is Pohang Iron and Steel Company, also known as POSCO.

The products subject to the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the *Order* may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560,

7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the *Order* is dispositive.

[FR Doc. 2023–03213 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC744]

Pacific 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 Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Advisory Subpanel will hold one public meeting.

DATES: The meeting will be held Friday, March 3, 2023, from 1 p.m. to 3 p.m., Pacific Standard Time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jessi Doerpinghaus, Staff Officer, Pacific Council; telephone: (503) 820–2415.

SUPPLEMENTARY INFORMATION: The primary purpose of this online meeting is to discuss and develop work products and recommendations for the Pacific Council's March 2023 meeting. Topics will include reviewing the 2022–23 California Current Ecosystem report and fishery ecosystem plan initiatives. Other items on the Pacific Council's March agenda may be discussed as well. The meeting agenda will be available on the Pacific Council's website in advance of the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: February 10, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–03221 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC769]

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 three-day in-person meeting of its Standing, Reef Fish, Shrimp, Socioeconomic, and Ecosystem Scientific and Statistical Committees (SSC).

DATES: The meeting will be held Tuesday, March 7 through Thursday, March 9, 2023, from 8:30 a.m. to 5:30 p.m., EST, daily.

ADDRESSES: The meeting will take place at the Gulf Council office. Registration information will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the ''meeting tab''.

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: Mr. Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, March 7, 2023; 8:30 a.m.–5:30 p.m., EST

The meeting will begin with Introductions and Adoption of Agenda, Approval of Verbatim Minutes and Meeting Summary from the January 10–12, 2023, meeting, and a review of the Scope of Work. The Committees will select an SSC Representative for the April 3–6, 2023, Gulf Council meeting in Gulfport, MS.

Following, the Committees will review presentations for Shrimp Effort Estimation, New Shrimp Assessment Models and Royal Red Shrimp Landings, including other background materials for SSC discussion. The Committees will review SEDAR 87 Gulf of Mexico Shrimp Terms of Reference (TORs), Schedule, Participants Approval; SEDAR Schedule and Planned Interim Analyses; Review of Red Grouper Operational Assessment (OA) TORs; and, Solicitation of Volunteers for SEDAR 74 Red Snapper Research Track Review Workshop. Public comment will be heard at the end of the day.

Wednesday, March 8, 2023; 8:30 a.m.–5:30 p.m., EST

The Committees will continue review and discuss any topics from the previous day if time is needed. The Committees will discuss a presentation and model documentation on Economics of Allocation; a presentation on Scamp and Yellowmouth Grouper Updated Projections within the Shallow-water Grouper Complex; a presentation and published research on Incorporating Socioeconomic Data into Stock Assessments and its Effect on Status Criteria Determination; a presentation and published research on Decision Points for Evaluating Proxies for Maximum Sustainable Yield; and will receive public comment at the end of the day, if any.

Thursday, March 9, 2023; 8:30 a.m.–5:30 p.m., EST

The Committees will review and discuss Explicit Temporal Modeling of Recruitment Residuals from Stock Synthesis, Evaluating Bottom Fishing Seasonal Closures in the Recreational Fishery, and Greater Amberjack Discard Mortality, along with presentations and background materials.

The Committees will receive an update on the Gulf of Mexico Great Amberjack Count, review an Examination of an Alternative Allocation Approach, and Wenchman and Mid-water Snapper Historical Landings, along with presentation and background materials. The Committees

will receive public comment before addressing any items under Other Business.

—Meeting Adjourns

The meeting will also be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the SSC 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 Scientific and Statistical Committees 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 Scientific and Statistical Committee 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

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

Dated: February 9, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–03145 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC765]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The meeting will be held on Tuesday, March 7, 2023, starting at 9 a.m. and continue through 12:30 p.m. on Wednesday, March 8, 2023. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the SSC will review and possibly modify the 2023 acceptable biological catch (ABC) recommendation and develop 2024–25 ABC recommendations for *Illex* squid based on updated analysis and work products developed to evaluate recent changes to the fishery and stock dynamics. The SSC will also review and provide feedback on the most recent Mid-Atlantic State of the Ecosystem report and the work plan/products of the SSC's Ecosystem Work Group. The SSC will review and provide feedback on the utility and potential application of the work products developed as part of a research project on short-term forecasts of species distributions. The SSC will also receive a presentation on the Council supported Ocean City, MD recreational video project and on the results and findings of the Council's recently completed management strategy evaluation on the recreational summer flounder fishery. In addition, the SSC will receive an update on the activities and future products of the Economic Work Group, OFL CV sub-group, and the constant/average ABC sub-group. The SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: February 9, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–03146 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC768]

Marine Mammals; File No. 27272

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066 (Responsible Party: David Wiley, Ph.D.) has applied in due form for a permit to conduct research on seven species of cetaceans.

DATES: Written, telefaxed, or email comments must be received on or before March 17, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27272 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27272 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR

part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to study seven cetacean species in the waters of the northeastern United States as well as Antarctica. The purpose of the research is to investigate the foraging ecology, habitat use, physiology, and acoustic and social behavior of these species to support ecosystem-based management and mitigate anthropogenic harm. Research would be conducted from boats and unmanned aircraft systems (UAS). Animals would be studied using photo-ID, photogrammetry, behavioral observations, collection of fecal samples, skin and blubber biopsy sampling, and suction cup tagging by a pole or UAS. Threatened and endangered species that would be studied if encountered are: fin whale (*Balaenoptera physalus*), sei whale (*B. borealis*), and North Atlantic right whales (*Eubalaena glacialis*). The permit would be valid for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 9, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–03132 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC408]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. The EFP would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before *March 2, 2023.*

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''High-Volume Intelligent Discard Chute EM EFP.''

FOR FURTHER INFORMATION CONTACT: Samantha Tolken, Fishery Management Specialist, *Samantha.Tolken@noaa.gov,* 978–675–2176.

SUPPLEMENTARY INFORMATION: The applicant submitted a complete application for an EFP to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

Citation	Regulation	Need for exemption
50 CFR 648.80(a)(3)(i) ..	Gulf of Maine Regulated Mesh Area Minimum Mesh Size and Gear Restrictions.	Conduct fishing with the use of 4.5-inch (11.4-cm) diamond mesh intended to facilitate the catch of redfish and 5.1-inch (13-cm) square mesh intended to facilitate the catch of haddock, in order to expand the predictive capabilities of the Artificial Intelligence (AI) program under varying catch compositions.
50 CFR 648.80(a)(4)(i) ..	Georges Bank Regulated Mesh Area Minimum Size and Gear Restrictions.	Conduct fishing with the use of 4.5-inch (11.4-cm) diamond mesh intended to facilitate the catch of redfish and 5.1-inch (13-cm) square mesh intended to facilitate the catch of haddock, in order to expand the predictive capabilities of the AI program under varying catch compositions.
50 CFR 648.81(a)(5)	Closed Area II Closure Area	Conduct fishing in the non-habitat management area of Closed Area II Closure Area from April 16 through January 31 to vary the areas fished and catch compositions to expand the capability of the AI program and improve predictive power.

TABLE 2—PROJECT SUMMARY

Project title	High-Volume Audit (HVA) Electronic Monitoring (EM) for Groundfish Vessels Testing an Intelligent Discard Chute.
Applicant	A.I.S. Inc.
Project objectives	To develop and pilot an innovative solution for electronic monitoring (EM) based on wireless video transfer, edge-based AI processing via intelligent discard chute, and web-based video review to incentivize fleet adoption for high-volume groundfish trawl vessels.
Application date	2/8/2023.
Project period	5/1/2023–4/30/2024.
Project location	Gulf of Maine and Georges Bank.
Number of vessels	4.
Number of trips	130.
Trip duration (days)	7–10 days.

TABLE 2—PROJECT SUMMARY—Continued

Total number of days	1,300.
Gear type(s)	Bottom trawl.
Number of tows or sets	20–25 per trip.
Duration of tows or sets	30 minutes–2 hours.

Project Narrative

The subject application would study the feasibility of deploying an intelligent discard chute with integrated artificial intelligence (AI) technology for catch accounting onboard high-volume groundfish trawl vessels. The project would determine the optimal design and workflow to minimize costs and maximize precision and accuracy of electronic monitoring (EM) data for size, species, and weight of regulatory discards. This research could significantly reduce the cost of EM programs for large, high-volume groundfish vessels if the intelligent discard chute and AI prove to be an accurate and reliable source for catch accounting. This information could also be used to develop a future High-Volume Audit (HVA) EM program for high-volume vessels, which could incentivize EM adoption in the region.

The subject application would allow up to four high-volume trawl sector vessels enrolled in the Audit Model EM program additional exemptions from 50 CFR 648.80(a)(3)(i) and (a)(4)(i) to conduct fishing using codends with diamond mesh as small as 4.5 inches (11.4 cm) to increase the catch of redfish in the Sector Redfish Exemption Area and conduct fishing using codends with square mesh as small as 5.1 inches (13 cm) to increase the catch of haddock in the Gulf of Maine and Georges Bank. The use of different mesh sizes and gears, leading to various catch compositions, will improve and expand the predictive capabilities of the AI program and the intelligent discard chute on high-volume vessels.

Additionally, vessels would be exempt from the non-habitat management area portion of the Closed Area II Closure Area, from April 16 through January 31, at 50 CFR 648.81(a)(5). This will allow vessel access to an additional fishing area, where catch compositions may differ. The opportunity to encounter varying catch composition will be used to further expand the AI program capabilities and predicative powers.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: February 9, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–03171 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Environmental Assessment for the Funding, Procurement, and Operation of NOAA Small Uncrewed Aircraft Systems

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability; request for comments.

SUMMARY: NOAA's Uncrewed Systems Research Transition Office (UxSRTO) in OAR has prepared a Draft Environmental Assessment (EA) for the Funding, Procurement, and Operation of NOAA Small Uncrewed Aircraft Systems (UAS). We are making the draft EA available for public review and comment.

DATES: Written comments must be received on or before March 17, 2023.

ADDRESSES: The Draft EA is available online at *https://orta.research.noaa.gov/wp-content/uploads/2023/01/Draft-PEA-for-NOAA-Small-Unmanned-Aircraft-Systems.pdf.* Please submit public comments via email to *UXS.OAR@NOAA.gov* with the subject line ''Public Comment on Draft EA for UAS.'' Please be aware that comments submitted may be posted on a Federal website or otherwise released publicly. Clearly indicate the section, page number, and line number, if applicable, to which submitted comments pertain. All comments must be provided in English. No business proprietary information, copyrighted information, or personally identifiable information should be submitted. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Bryan Cole, Director, NOAA Uncrewed Systems Research Transition Office (email: *bryan.cole@noaa.gov* or phone number: 831–601–2107).

SUPPLEMENTARY INFORMATION: The UxSRTO is often directly or indirectly involved in the funding, procurement, and operation of small UAS during the course of its normal office functions. The UxSRTO, and its predecessor, the NOAA UAS Program Office in OAR, were formally established to provide guidance and expertise in support of NOAA's efforts in the testing and development of UAS and to help expand UAS research, development, and transitions to operations and commercialization. The draft EA evaluates the potential impacts on the environment from the types of small UAS platforms and operations commonly supported by the UxSRTO across NOAA, in any environment for which NOAA has a mission and potential need for UAS resources to help meet related mission objectives.

For purposes of the assessment, the use of the term ''small UAS'' follows suit with the Federal Aviation Administration's (FAA) definition of ''small unmanned aircraft'' (14 CFR 107.3), which weigh ''less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.'' The geographic scope of the action area includes the airspace ranging from just above the surface (for launch and recovery), extending upward to an operational altitude of approximately 400 ft. above ground level (AGL) for a majority of applications, but may also include operational altitudes up to as high as 100,000 ft. mean sea level (MSL) for a few others.

UxSRTO proposes that the support for small UAS operations at NOAA, as described in the proposed action, would have no significant impact on the environment. The Draft EA has been prepared in accordance with the National Environmental Policy Act of

1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) and Council on Environmental Quality implementing regulations (40 CFR parts 1500–1508), as well as NOAA's procedures for compliance with NEPA as specified in the Companion Manual to NOAA Administrative Order 216–6A.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–03222 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC746]

Pacific 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 Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team will hold one public meeting.

DATES: The meeting will be held Thursday, March 2, 2023, from 1 p.m. to 4 p.m., Pacific Standard Time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jessi Doerpinghaus, Staff Officer, Pacific Council; telephone: (503) 820–2415.

SUPPLEMENTARY INFORMATION: The primary purpose of this online meeting is to discuss and develop work products and recommendations for the Pacific Council's March and April 2023 meetings. Topics will include reviewing the 2022–23 California Current Ecosystem report and fishery ecosystem plan initiatives. Other items on the Pacific Council's March and April agendas may be discussed as well. The meeting agenda will be available on the Pacific Council's website in advance of the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: February 9, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–03144 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC690]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Coastal Pelagic Species (CPS) Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold an online meeting to review revisions to the habitat model for the northern subpopulation of Pacific sardine and methods for analyzing and using the 2022 CPS survey. The meeting is open to the public.

DATES: The SSC CPS Subcommittee's online meeting will be held Monday, March 20, 2023 and Tuesday, March 21, 2023, beginning at 9 a.m. and continuing until 1 p.m., Pacific Daylight Time, each day or until business for the day has been completed.

ADDRESSES: The SSC's CPS Subcommittee's meeting will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Jessi Doerpinghaus, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2415.

SUPPLEMENTARY INFORMATION: The purpose of the SSC CPS Subcommittee's meeting is to (a) review proposed changes to the habitat model for the northern subpopulation of Pacific sardine, (b) review how the habitat model is used to assign catches of Pacific sardine to the northern subpopulation, (c) review how the habitat model is used to define the area covered by the CPS survey that pertains to the northern subpopulation, and (d) review methods for analyzing and using the 2022 CPS survey data given disruptions. Members of the Pacific Council's CPS advisory bodies are encouraged to attend.

No management actions will be decided by the SSC's CPS Subcommittee. The SSC CPS Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and Pacific Council at the April meeting in Foster City, CA.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC CPS Subcommittee to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt

(*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: February 10, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–03220 Filed 2–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors for the Western Hemisphere Institute for Security Cooperation; Meeting Notice

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Notice of open meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board of Visitors for the Western Hemisphere Institute for Security Cooperation (WHINSEC). This meeting is open to the public.

DATES: The Board of Visitors will meet from 9:00 a.m. to 4:00 p.m. on Thursday, March 16, 2023.

ADDRESSES: Western Hemisphere Institute for Security Cooperation, Bradley Hall, 7301 Baltzell Avenue, Building 396, Fort Benning, GA 31905.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Procell, Alternate Designated Federal Officer for the Committee, by email at *richard.d.procell2.civ@army.mil,* or by telephone at (913) 684–2963.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), 41 CFR 102–3.140(c), and 41 CFR 102–3.150.

Purpose of the Meeting: The Board of Visitors for the Western Hemisphere Institute for Security Cooperation is a non-discretionary Federal Advisory Committee chartered to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on matters pertaining to the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the institute; other matters relating to the institute that the board decides to consider; and other items that the Secretary of Defense determines appropriate. The board reviews curriculum to determine whether it adheres to current U.S. doctrine, complies with applicable U.S. laws and regulations, and is consistent with U.S. policy goals toward Latin America and the Caribbean. The board also determines whether the instruction under the curriculum of the institute appropriately emphasizes human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society. The Secretary of Defense may act on the committee's advice and recommendations.

Agenda: Status briefing from the institute's commandant; updates from the Department of State, U.S. Northern Command and U.S. Southern Command; a public comments period; and presentation of other information appropriate to the board's interests.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. A 30-minute period between 2:30 to 3:00 p.m. will be available for verbal public comments. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Procell, via electronic mail at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the meeting of the committee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter the base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Bradley Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Mr. Procell at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or regarding the committee's mission in general. Written comments or statements should be submitted to Mr. Procell via electronic mail at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least five business days prior to the meeting to be considered by the committee. The Designated Federal Officer will review all timely submitted written comments or statements with the committee chairperson, and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date will be filed and presented to the committee during its next meeting.

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–03219 Filed 2–14–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF ENERGY

Grid Deployment Office Draft Guidance on Implementing the Maintaining and Enhancing Hydroelectricity Incentives

AGENCY: Grid Deployment Office, Office of the Under Secretary for Infrastructure, Department of Energy.

ACTION: Notification of availability of Draft Guidance and request for comment.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of availability of a Draft Guidance and requests comment on the Draft Guidance to inform its implementation of hydroelectric incentives in the Infrastructure Investment and Jobs Act of 2021 (IIJA). The Draft Guidance describes the application process and the information necessary for the Secretary of Energy to make incentive payments to owners and authorized operators of qualified hydroelectric facilities pursuant to the Energy Policy Act of 2005 (EPAct 2005), Maintaining and Enhancing Hydroelectricity Incentives.

DATES: DOE will accept comments, data, and information regarding this Draft Guidance no later than 5:00 p.m. ET on February 28, 2023. See ''Public participation'' under **SUPPLEMENTARY INFORMATION**, sections for details.

DOE will hold a public meeting via webinar on Thursday, February 16, 2023, at 1:00 p.m. ET, see ''Public Participation'' under **SUPPLEMENTARY INFORMATION**, sections for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE is also offering an opportunity to submit an individual verbal response in lieu of or in addition to providing written responses to the Draft Guidance.

Respondents may request a 30-minute individual unrecorded opportunity to provide a verbal response to DOE staff. Requests for an individual verbal response must be requested no later than 5:00 p.m. (ET) on Thursday, February 16, 2023. See ''Public participation'' under **SUPPLEMENTARY INFORMATION**, sections for details.

ADDRESSES: Interested parties are to submit written comments electronically to *hydroelectricincentives@hq.doe.gov.* DOE's Draft Guidance is available at: *https://www.energy.gov/gdo/hydroelectric-247-draft-guidance.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Ms. Luciana Ciocci, U.S. Department of Energy, Grid Deployment Office, 1000 Independence Ave. SW, Washington, DC 20585, (202) 480–5768 or by email at *hydroelectricincentives@hq.doe.gov.* Further instruction can be found in the Draft Guidance posted at *https://www.energy.gov/gdo/hydroelectric-247-draft-guidance.* Electronic communications are recommended for correspondence and required for submission of comments.

SUPPLEMENTARY INFORMATION: Through section 40333 of the IIJA, Public Law 117–58, Congress amended EPAct 2005, Public Law 109–58, to establish Section 247, Maintaining and Enhancing Hydroelectricity Incentives. *See* 42 U.S.C. 15883. The provision requires the Secretary to make incentive payments to the owner or authorized operator of a qualified hydroelectric facility, subject to the availability of appropriations, for capital improvements directly related to improving grid resilience, improving dam safety, and environmental improvements.[1] Incentive payments may be made upon receipt by the Secretary of an incentive payment application that demonstrates that the applicant is eligible to receive such payment and satisfies the other requirements as deemed necessary.

Under the statute, the incentive payments include the following limitations: an incentive payment shall not exceed 30 percent of the costs of the applicable capital improvement(s); and no more than one incentive payment may be made to a single qualified hydroelectric facility in any fiscal year that shall not exceed $5,000,000.[2]

On June 30, 2022, DOE released a Request for Information (RFI) to provide interested parties the opportunity to provide preliminary feedback on the design of the section 247 of EPAct 2005 incentive program.[3] Based on the RFI responses, the DOE Grid Deployment Office's (GDO) Hydroelectric Incentives Program has developed the Draft Guidance and now seeks public comment on this draft.

The Draft Guidance describes the application process and the information necessary for the Secretary of Energy to make incentive payments to owners and authorized operators of qualified hydroelectric facilities pursuant to section 247 of EPAct 2005, Maintaining and Enhancing Hydroelectricity Incentives.

The Draft Guidance consists of fourteen sections.

I. Purpose and Scope
II. Authority
III. List of Definitions
IV. Who may apply?
V. What is a qualified hydroelectric facility?
VI. How will the Program allocate funding for eligible capital improvement projects?
VII. At what stage in the development process would a capital improvement project be eligible to apply for an incentive payment?
VIII. What are the general application requirements?
IX. What types of capital improvement projects qualify for incentive payments and what information does DOE need to determine whether a project is eligible?
- Grid Resiliency
- Dam Safety
- Environmental Improvements

X. What is the timing of incentive payments?
XI. What are the procedures for processing applications?
XII. FAQ (this section will include questions that don't easily fit within the above categories)
XIII. Funding Restrictions
XIV. Administrative Appeals

While reviewers are welcome to provide comments on all aspects of this Draft Guidance, DOE is particularly interested in receiving comments with respect to the following five questions.

(1) The DOE proposes to use a scoring criteria rubric to prioritize which capital improvement applications are awarded funding in the event the program is oversubscribed (*i.e.,* more eligible applications than available funding). DOE seeks feedback on this approach. (*See* Section IX of the Draft Guidance).

(2) The DOE proposes to distribute funds in an equitable manner in the event the program is oversubscribed. To do so, the DOE plans to fund applications in all three of the categories of capital improvements (*i.e.,* improving grid resiliency, improving dam safety, and environmental improvements) by selecting the top scoring application in each category for small projects and remaining eligible projects. DOE seeks feedback on this approach. (*See* Section XI of the Draft Guidance).

(3) Recognizing that small hydropower facilities make up 75 percent of the nation's hydropower fleet, the DOE intends to allocate up to 25 percent of the program funding to support capital improvements made at small hydropower projects (nameplate capacity of 10 MW or less that is owned or operated by a small business, Indian tribe, municipality, or electric cooperative.) DOE seeks feedback on this approach. (*See* Section IV of the Draft Guidance).

(4) To balance risk while incentivizing hydropower owners and operators to make qualified capital improvements, DOE is proposing to provide a portion of the funding (up to 10 percent) up front and the remainder upon completion of the capital improvement(s). DOE seeks feedback on this approach. (*See* Section X of the Draft Guidance).

(5) DOE estimates eight (8) hours of preparation time for the EPAct 2005 Section 247 application. DOE seeks comment on this estimate.

Public Participation: DOE is offering three response options to the request for comment on Draft Guidance.

Public Informational Webinar: On Thursday, February 16, 2023, at 1:00 p.m. ET, an informal Public Informational Webinar will be held to discuss general feedback from interested parties regarding the content of Draft Guidance. To register for this informational webinar, please sign up at: *https://nrel.zoomgov.com/meeting/register/vJItce-srj4tHat8gC1lnCcPw5PvjSVDogo.* Participants are responsible for ensuring their systems are compatible with the webinar software. The webinar is open to all members of the public. Any person who has an interest in the topics addressed in the Draft Guidance or identified in this request for comment, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar within the webinar registration page. A DOE designated official will preside over the webinar and may also use a professional facilitator to aid discussion. The webinar will not be a judicial or evidentiary-type public hearing. The webinar will be recorded, and a transcript of the proceedings will be made available on DOE's website. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other

[1] *See* 42 U.S.C. 15883(b).
[2] *See* 42 U.S.C. 15883(c).
[3] *See* 87 FR 40515 (Jul 7, 2022).

commercial matters regulated by U.S. anti-trust laws.

Written Response: Interested parties are to submit written comments electronically to *hydroelectricincentives@hq.doe.gov* no later than 5:00 p.m. (ET) on Tuesday, February 28, 2023. 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. Responses must be provided as a Microsoft Word (.docx) or Adobe PDF (.pdf) attachment to the email, and no more than 15 pages in length, 12-point font, 1-inch margins. Only electronic responses will be accepted.

For ease of replying and to aid categorization of your responses, please copy and paste the questions from this request for comment or the relevant section of the Draft Guidance as a template for your response. Respondents may answer as many or as few questions as they wish. DOE GDO will not respond to individual submissions or publish publicly a compendium of responses. A response to this request for comment will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

Respondents are requested to provide the following information at the start of their written response to this request for comment:

- Company/institution name;
- Company/institution contact;
- Contact's address, phone number, and email address.

Individual Verbal Response: DOE is also offering an opportunity to submit an individual verbal response in lieu of or in addition to providing written responses to the Draft Guidance, respondents may request a 30-minute individual unrecorded opportunity to provide a verbal response to a DOE staff member. The discussion with a DOE staff member will be limited to the topics presented in the Draft Guidance. Please submit your request to *hydroelectricincentives@hq.doe.gov* and you will be contacted by a GDO staff member to schedule a time. Requests for an individual verbal response must be submitted no later than 5:00 p.m. (ET) on Thursday, February 16, 2023.

Respondents will be asked to provide the following information at the start of the verbal response to this request for comment:

A. Company/institution name;

B. Company/institution contact;

C. Contact's address, phone number, and email address.

Disclaimer and Important Notes

This request for comment is not a Funding Opportunity Announcement (FOA); therefore, GDO is not accepting applications at this time. Responding to this request does not provide any advantage or disadvantage to potential applicants if GDO chooses to issue a solicitation regarding the subject matter in the future. Final details, including the anticipated size, quantity, and timing of GDO funded incentives, will be subject to Congressional appropriations and direction.

Any information obtained as a result of this request for comment is intended to be used by the Government on a non-attribution basis for planning and strategy development; this request for comment does not constitute a formal solicitation for proposals or abstracts. Your response to this request for comment will be treated as information only. GDO will review and consider all responses in its formulation of program strategies for the identified materials of interest that are the subject of this request. GDO will not provide reimbursement for costs incurred in responding to this request for comment. Respondents are advised that GDO is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this request for comment. Responses to this request for comment do not bind GDO to any further actions related to this topic.

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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).

Evaluation and Administration by Federal and Non-Federal Personnel

Federal employees are subject to the non-disclosure requirements of a criminal statute, the Trade Secrets Act, 18 U.S.C. 1905. The Government may seek the advice of qualified non-Federal personnel. The Government may also use non-Federal personnel to conduct routine, nondiscretionary administrative activities. The respondents, by submitting their response, consent to GDO providing their response to non-Federal parties. Non-Federal parties given access to responses must be subject to an appropriate obligation of confidentiality prior to being given the access. Submissions may be reviewed by support contractors and private consultants.

Signing Authority

This document of the Department of Energy was signed on February 8, 2023, by Maria Duaime Robinson, 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 February 10, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–03201 Filed 2–14–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Request for Information—Foundation for Energy Security and Innovation (FESI)

AGENCY: Office of Technology Transitions, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) publishes the following questions regarding potential engagement with the Foundation for Energy Security and Innovation (FESI), directed to be established under the CHIPS and Science Act. The purpose of this RFI is to seek input on how DOE stakeholders may engage with the FESI directly, and how DOE may engage with

the FESI and the communities it will serve. Interested parties are requested to answer some or all of the questions at their discretion.

DATES: Responses to the RFI must be received no later than 5 p.m. (ET) on March 27, 2023.

ADDRESSES: Interested parties are to submit comments electronically to *FESI.RFI@hq.doe.gov* with the subject line ''FESI RFI Response'' no later than March 27, 2023. All responses must be submitted as a Microsoft Word document (.doc/.docx) of no more than 5 pages in length, with black, Times New Roman, 12 point font, and 1 inch margins as an attachment to an email. The document cannot exceed 2MB in size. Only electronic responses to the above email address will be accepted. DOE will not consider responses submitted by any other means.

Note: If clicking on the above link gives you an error message, you must CUT AND PASTE the URL into your browser to reach the web page.

FOR FURTHER INFORMATION CONTACT: Mary Yamada, (240) 888–4568, *Mary.Yamada@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE is renowned for its research prowess, technology expertise, and ability to leverage American ingenuity to invent early-stage clean energy technologies. To help meet the Administration's climate, jobs, and economic goals, it is imperative that our early-stage technologies are successfully guided through to demonstration and deployment. Only then will DOE-invested technologies activate their fullest potential to help combat the global climate crisis. The Office of Technology Transitions (OTT) works to develop policies, share lessons learned, and improve the Department's ability to commercialize. At the highest level, commercialization is the process of taking an idea and bringing it to market—or progression across the research, development, demonstration, and deployment (RDD&D) continuum to obtain market viability. The RDD&D continuum provides a useful framework for mapping the stages of a technology's progression to commercialization—starting with research into an innovative idea and ending with commercial scale deployment.

The commercialization pathway for clean technologies is nonlinear and often fails because of inadequate support infrastructure including capital, tooling, as well as market, manufacturing, and industry expertise—not because of the technology's fundamentals. Commercialization support infrastructure on a national, regional, and local scale are essential to ensuring economics are addressed and critical ecosystem players are onboard. The economic and business model requirements for deployment, as well as a technology's societal considerations, can and should shape the technical problem definition and design of solutions at all stages of the RDD&D continuum. OTT is charged with thinking through this problem set and working collaboratively across DOE to maximize our commercialization outcomes. Given the importance and complexity of OTT's commercialization mandate, it is essential the DOE explore and leverage all authorities granted to the Agency. This includes a new DOE opportunity in the CHIPS and Science Act of 2022—the Foundation for Energy Security and Innovation (FESI).

There has been much interest in the establishment of this new foundation, and DOE has received inquiries regarding future activities with FESI. In order to obtain a wide array of perspectives from stakeholders, DOE, through this RFI, is seeking input on how it might engage with the FESI and the communities it will serve.

The FESI is to be established as an independent non-profit entity by the DOE pursuant to authorization in the CHIPS and Science Act of 2022 (section 10691) (Pub. L. 117–167), signed into law by President Biden on August 9, 2022. The mission of FESI is two-fold: (1) to support the mission of the Department of Energy generally; and more specifically, (2) to increase private and philanthropic sector investments to accelerate the commercialization of energy technologies. The statute provides FESI with broad authority to carry out its mission.

To accomplish this mission, Congress authorized the FESI to engage with the private sector to raise funds that support efforts to ''create, characterize, develop, test, validate, and deploy or commercialize innovative technologies that address crosscutting national energy challenges''.[1]

To facilitate establishment of FESI so it may begin achieving its mission, Congress has mandated that DOE appoint and convene a Board of Directors to include statutorily required ex officio non-voting members from DOE, as well as appointed voting members. The CHIPS and Science Act of 2022 identified the DOE ex officio members of the Board as the Secretary of Energy, the Under Secretary for Science, the Under Secretary for Nuclear Security, and the DOE Chief Commercialization Officer.

To assist with identifying potential initial voting members of the Board, Congress mandated DOE consult with the National Academies of Sciences, Engineering, and Medicine to develop a list of well-qualified individuals that represent a diverse set of stakeholders.

Following appointment of the initial Board of Directors and establishment of FESI, the Department of Energy's Secretary will also appoint liaisons from across DOE, including from the Office of Technology Transitions (OTT) and the Undersecretaries for and Infrastructure, among others, to collaborate and coordinate with the Foundation. As specified in the CHIPS and Science Act of 2022, collaboration and coordination with OTT and other relevant DOE offices is essential to ensure that the FESI supports the DOE mission without duplicating existing commercialization and other activities and programs carried out by the DOE.

Questions seeking input on potential objectives and activities for DOE engagement with the FESI:

To help identify and prioritize opportunities for DOE to engage and partner with the FESI, DOE is seeking information from potential stakeholder groups including, but not limited to:

- Philanthropic and non-profit organizations.
- Community stakeholders.
- DOE's National Laboratory foundations.
- Potential investors in companies developing technologies aligned with the DOE mission.
- Industry stakeholders, especially those representing diverse regions, sectors, and communities.
- Other potential stakeholders or collaborators of FESI.

1. Which aspects of the DOE mission [2] and energy technology commercialization [3] can you identify as potentially benefitting from FESI's involvement?

2. Once the FESI is established, what mission areas would you recommend DOE prioritize working on with the FESI?

3. In what ways would you recommend DOE seek support of the FESI to carry out the mission areas identified?

4. To assist DOE in understanding and potentially better aligning with stakeholder interest, in what ways would you recommend DOE engage with organizations to determine what they seek to accomplish?

[1] Section 10691, CHIPS and Science Act of 2022 (Pub. L. 117–167).

[2] DOE's mission statement can be found at the following link: *https://www.energy.gov/mission*.

[3] *See* commercialization description.

5. How would you envision DOE engage with the FESI to:

a. Better support communities wishing to participate in the energy transition?

b. Better support industry and small businesses wishing to participate in the energy transition?

c. Drive long-term climate and clean energy strategy?

d. Broaden participation in energy technology development among individuals from historically underrepresented groups or regions?

e. Support the commercialization of energy technologies?

f. Support workforce development?

g. Foster collaboration and partnerships with researchers from the Federal Government, State governments, institutions of higher education, including historically Black colleges or universities, Tribal Colleges or Universities, and minority-serving institutions, federally funded research and development centers (FFRDCs), industry, and nonprofit organizations for the research, development, demonstration and deployment of transformative energy and associated technologies?

6. What potential challenges should DOE be aware of to proactively manage given the intent to establish the FESI?

7. What other ways could the establishment of FESI support the DOE missions? How could DOE engage effectively with the FESI on these activities?

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. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on February 9, 2023, by Vanessa Chan, Chief Commercialization Officer and Director, Office of Technology Transitions, 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 February 10, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–03199 Filed 2–14–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2649–000.
Applicants: Macquarie Energy LLC.
Description: Refund Report for June 2021 spot market sales of Macquarie Energy LLC.
Filed Date: 2/3/23.
Accession Number: 20230203–5133.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1065–000.
Applicants: SAGE Development Authority.
Description: Request for Prospective Tariff Waiver, et al. of SAGE Development Authority.
Filed Date: 2/7/23.
Accession Number: 20230207–5184.
Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER23–1072–000.
Applicants: Versant Power.
Description: § 205(d) Rate Filing: Amendment to Open Access Transmission Tariff for Maine Public District to be effective 6/1/2023.
Filed Date: 2/8/23.
Accession Number: 20230208–5117.
Comment Date: 5 p.m. ET 3/1/23.

Docket Numbers: ER23–1073–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–02–09_SA 3489 Duke-Speedway Solar 2nd Rev GIA (J805) to be effective 1/27/2023.
Filed Date: 2/9/23.
Accession Number: 20230209–5029.
Comment Date: 5 p.m. ET 3/2/23.

Docket Numbers: ER23–1074–000.
Applicants: Evergy Metro, Inc.
Description: § 205(d) Rate Filing: Amendment Reflecting Transfer of Ownership of Certain Interconnection Equipment to be effective 2/10/2023.
Filed Date: 2/9/23.
Accession Number: 20230209–5033.
Comment Date: 5 p.m. ET 3/2/23.

Docket Numbers: ER23–1075–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Second Revised ISA, Service Agreement No. 4138; Queue No. AD2–075 to be effective 1/30/2023.
Filed Date: 2/9/23.
Accession Number: 20230209–5036.
Comment Date: 5 p.m. ET 3/2/23.

Docket Numbers: ER23–1076–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–02–09_SA 2799 ATC-City of New London 2nd Rev CFA to be effective 4/11/2023.
Filed Date: 2/9/23.
Accession Number: 20230209–5039.
Comment Date: 5 p.m. ET 3/2/23.

Docket Numbers: ER23–1077–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Amendment: 2023–02–09 EGF Trans FAC 483 0.1.0 NOC to be effective 12/31/2022.
Filed Date: 2/9/23.
Accession Number: 20230209–5072.
Comment Date: 5 p.m. ET 3/2/23.

Docket Numbers: ER23–1078–000.
Applicants: Tampa Electric Company.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule No. 6 with DEF_Dale Mabry and Morgan to be effective 4/11/2023.
Filed Date: 2/9/23.
Accession Number: 20230209–5091.
Comment Date: 5 p.m. ET 3/2/23.

Docket Numbers: ER23–1079–000.
Applicants: PJM Interconnection, L.L.C..
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6206; Queue No. AE1–196 to be effective 4/11/2023.
Filed Date: 2/9/23.
Accession Number: 20230209–5113.
Comment Date: 5 p.m. ET 3/2/23.

Docket Numbers: ER23–1080–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 408, HooDoo Wash LGIA to be effective 1/10/2023.
Filed Date: 2/9/23.
Accession Number: 20230209–5117.
Comment Date: 5 p.m. ET 3/2/23.

Docket Numbers: ER23–1081–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6806; Queue No. S14 to be effective 1/10/2023.

Filed Date: 2/9/23.

Accession Number: 20230209–5125.

Comment Date: 5 p.m. ET 3/2/23.

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: February 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03203 Filed 2–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–431–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2023–02–08 Negotiated Rate Agreement Amendments to be effective 2/9/2023.

Filed Date: 2/8/23.

Accession Number: 20230208–5059.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: RP23–432–000.

Applicants: K2 Commodities, LLC, Citigroup Energy Inc.

Description: Joint Petition for Temporary Waiver of Capacity Release Regulations, et al. of K2 Commodities, LLC, et al.

Filed Date: 2/8/23.

Accession Number: 20230208–5072.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: RP23–433–000.

Applicants: Trunkline Gas Company, LLC.

Description: § 4(d) Rate Filing: Update GT&C Section 29 to be effective 3/9/2023.

Filed Date: 2/9/23.

Accession Number: 20230209–5023.

Comment Date: 5 p.m. ET 2/21/23.

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.

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: February 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–03207 Filed 2–14–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0773; FRL–10208–01–OCSPP]

Agency Information Collection Activities; Proposed Collection and Request for Comment; Pollution Prevention (P2) Grantee Data Collection in Standard Electronic Format

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on an Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB). The ICR, entitled: ''Pollution Prevention (P2) Grantee Data Collection in Standard Electronic Format'' (EPA ICR No. 2728.01; OMB Control No. 2070–NEW), represents a new ICR. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be submitted on or before April 17, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0772, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For general information contact: Katherine Sleasman, Regulatory Support Branch (7602M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (202) 566–1205; email address: *sleasman.katherine@epa.gov*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork

burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Pollution Prevention (P2) Grantee Data Collection in Standard Electronic Format.

ICR numbers: EPA ICR No.2728.01 and OMB Control No. 2070–NEW.

ICR status: This ICR is a new information collection activity. Under the PRA, an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers, after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as with the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations in title 40 of the Code of Federal Regulations (CFR) is consolidated in 40 CFR part 9.

Abstract: This ICR presents EPA's estimates for the burden and costs associated with the information collection activities related to pollution prevention grant programs and the collection of activity and results data from the grantees via a standard electronic format.

Pollution prevention (P2) means reducing or eliminating pollutants from entering any waste stream or otherwise being released into the environment prior to recycling, treatment, or disposal. EPA's P2 program operates three grant programs and is developing two new grant programs. The three existing programs are: The Pollution Prevention State Tribal Assistance Grants (P2 STAG); the Bipartisan Infrastructure Law Pollution Prevention Grants (P2 BIL); and the Source Reduction Assistance (SRA) Grants. The P2 STAG and SRA grants are funded through recurring appropriations and require grantees to provide matching funds. The P2 BIL grants, which are funded through the 2021 Infrastructure Investment and Jobs Act (IIJA), also referred to as the Bipartisan Infrastructure Law (BIL), are also STAG but do not require grantees to provide matching funds. The two new grant programs under development are: The Pollution Prevention Grant: Environmental Justice Through Safer/Sustainable Products (P2 EJ Products); and the Pollution Prevention Grant: Environmental Justice in Communities (P2 EJ Facilities). The P2 EJ Products and P2 EJ Facilities grants will also be supported by BIL funding and, as such, do not require grantee matching funds.

EPA's goal in developing a standard electronic format is to provide a consistent manner of data collection from grant-funded projects so that ultimately the information collected can be inputted into a database which is searchable and sharable. To date, EPA has developed two templates in MS Excel format. The templates include two forms for two types of P2 and SRA projects: one for projects providing direct technical assistance to businesses (EPA Form 9600–047 (Template #1)) and one for projects supporting recognition and leadership programs or providing P2 technical assistance to broad audiences, including webinars, roundtables, tool development, research and demonstration projects (EPA Form 9600–048 (Template #2)). The completed templates will be collected annually by Regional grant administrators, who will be responsible for reviewing the data prior to database upload. EPA is in the process of completing similar templates for the two new grant programs and anticipates the reporting burden will be similar to the two existing grant programs.

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 to 20 per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/affected entities: Entities potentially affected by this ICR may include entities identified by the North American Industrial Classification System (NAICS) code 99200, *i.e.,* State Governmental entities.

Respondent's obligation to respond: Mandatory for grant recipients.

Estimated total number of potential respondents: 275 (total).

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1 (per year).

Estimated total annual estimated burden hours: 5,123 hours (per year).

Estimated total annual costs: $431,778 (per year), includes $0 annualized capital or operation and maintenance costs.

III. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: February 2, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–03139 Filed 2–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–10670–01–ORD]

Request for Public Nominations of Experts To Serve on a Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is seeking nominations for technical experts to serve as Special Government Employees (SGEs) on a review panel under the authority of the Board of Scientific Counselors (BOSC), a federal advisory committee to the Office of Research and Development (ORD). Selected experts will review ORD's draft documents detailing scientific studies supporting the development of transcriptomic-based toxicity values and their implementation as a new EPA Transcriptomic Assessment Product (ETAP). The ETAP is a proposed ORD assessment product that utilizes a standardized short-term *in vivo* study design and data analysis procedures to develop transcriptomic-based toxicity values for data poor chemicals. The review will take place between April and July 2023. Submission of nominations should be made via the BOSC website at: *https://www.epa.gov/bosc.*

DATES: Nominations should be submitted by March 3, 2023, per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public needing additional information regarding this Notice and Request for Nominations may contact Mr. Tom Tracy, Office of Science Policy, Office of Research and Development, Mail Code B343–01, 109 T.W. Alexander Drive, Research

Triangle Park, NC 27711; via phone/voice mail at: (919) 541–4334; or via email at: *tracy.tom@epa.gov.* General information concerning the BOSC can be found at the following website: *https://www.epa.gov/bosc.*

SUPPLEMENTARY INFORMATION:

Background

The BOSC is a chartered Federal Advisory Committee established by the EPA to provide independent scientific and technical peer review, advice, consultation, and recommendations about ORD. As a Federal Advisory Committee, the BOSC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations.

The BOSC is comprised of an Executive Committee and two supporting subcommittee(s): Social and Community Science, and Climate Change. Please visit *https://www.epa.gov/aboutepa/about-office-research-and-development-ord* to learn more about ORD's research programs.

Members of the BOSC constitute a distinguished body of non-EPA scientists, engineers, and economists who are experts in their respective fields. The chartered BOSC provides scientific advice to the EPA Administrator on a variety of EPA science and research topics. All the work of BOSC standing committees and ad-hoc panels is conducted under the auspices of the chartered BOSC. The chartered BOSC members review all BOSC standing committee and ad-hoc panel draft reports and determine whether each meets the BOSC's criteria and high-quality standards required to deliver them to the EPA Administrator.

The BOSC will evaluate the Office of Research and Development (ORD)'s draft scientific studies supporting the development of transcriptomic-based toxicity values and their use as a new EPA Transcriptomic Assessment Product (ETAP). Draft documents will be provided in the BOSC docket prior to the meeting for an in-depth evaluation of:

- Literature review and scientific studies supporting the development of transcriptomic points-of-departure from short-term *in vivo* studies;
- Derivation of transcriptomic toxicity values for chronic toxicity; and
- Incorporation of transcriptomic toxicity values into a new standardized assessment product that is intended for data poor chemicals.
- Example application of the ETAP to a data poor per- and polyfluoroalkyl substance (PFAS).

The review of the draft documents detailing underlying scientific studies and implementation of ETAP by the BOSC is being performed in close coordination with a separate BOSC review of a value-of-information (VOI) analysis comparing the ETAP with traditional human health assessment practices. The VOI analysis is intended to evaluate the public health and economic trade-offs associated with the timeliness, uncertainty, and costs of the different toxicity evaluation and assessment approaches.

Expertise Sought

The EPA invites nominations of individuals to serve as SGEs with expertise or extensive experience in the following scientific disciplines and topic areas as they relate to human health and the environment:

- Human health chemical risk assessment
- Toxicology
- Biostatistics
- Transcriptomics, including dose response modeling of transcriptomic data
- Systematic evidence mapping

Selection Criteria

Nominations will be evaluated on the basis of several criteria including: (a) demonstrated scientific and/or technical credentials and disciplinary expertise, knowledge, and experience in relevant fields; (b) availability to serve and willingness to commit time to the committee (approximately one to three meetings both by teleconferences and possibly face-to-face meetings); (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) demonstrated ability to work constructively and effectively on committees; and (f) background and experiences that would contribute to the diversity of viewpoints on the Executive Committee or Subcommittee, *e.g.,* workforce sector, geographical location, social, cultural, and educational backgrounds, and professional affiliations.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate qualified persons to be considered for appointment to the advisory committee. Nominations should be submitted via the BOSC website at: *https://www.epa.gov/bosc.* Nominations should be submitted no later than March 3, 2023. To receive full consideration, nominations should include all the information requested. EPA's nomination form requests: contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita and/or resume; and additional information that would be useful for considering the nomination such as background and qualifications (*e.g.,* current position, educational background, expertise, research areas), experience relevant to one or more of ORD's research programs, service on other advisory committees and professional societies, and availability to participate as an SGE. Persons having questions about the nomination procedures, or who are unable to submit nominations through the BOSC website, should contact Mr. Tom Tracy, as indicated above under **FOR FURTHER INFORMATION CONTACT** section of this notice.

Mary Ross,

Director, Office of Science Advisor, Policy and Engagement.

[FR Doc. 2023–03194 Filed 2–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9448–02–OAR]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2021 is available for public review. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2023, as well as subsequent inventory reports.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments by March 17, 2023. However, comments received after that date will still be welcomed and considered for the next edition of this report.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2023–0001, to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. Do not submit electronically any information you consider to be Confidential Business Information (CBI). Comments can also be submitted in hardcopy to GHG Inventory at: Environmental Protection Agency, Climate Change Division

(6207A), 1200 Pennsylvania Ave. NW, Washington, DC 20460, Fax: (202) 343–2342. You are welcome and encouraged to send an email with your comments to *GHGInventory@epa.gov.* EPA may publish any comment received to its public docket, submitted in hardcopy or sent via email. For additional submission methods, the full EPA public comment policy, information about CBI, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Mausami Desai, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–9381, *GHGInventory@epa.gov.*

SUPPLEMENTARY INFORMATION: Annual U.S. emissions for the period of time from 1990 through 2021 are summarized and presented by sector, including source and sink categories. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulfur hexafluoride (SF_6), and nitrogen trifluoride (NF_3) emissions. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2021 is the latest in a series of annual, policy-neutral U.S. submissions to the Secretariat of the UNFCCC. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2023, as well as subsequent inventory reports. The draft report is available at *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks.*

Paul Gunning,

Director, Office of Atmospheric Programs.

[FR Doc. 2023–01575 Filed 2–14–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012307–006.

Agreement Name: Maersk/APL Slot Exchange Agreement.

Parties: American Presidents Lines, LLC; Maersk A/S.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The amendment would revise the amount of space to be chartered and update the contact information for the parties.

Proposed Effective Date: 3/20/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/176.

Dated: February 10, 2023.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2023–03200 Filed 2–14–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 March 13, 2023.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *GBH Inc., Breslau, Ontario, Canada; VersaBank, London, Ontario, Canada, and its wholly owned subsidiary, VersaHoldings US Corp. (VersaHoldings), Wilmington, Delaware;* to become bank holding companies by acquiring Stearns Bank Holdingford National Association, Holdingford, Minnesota. In addition, GBH Inc.,VersaBank, and VersaHoldings, through VersaFinance US Corp., London, Ontario, Canada; to engage de novo in extending credit and servicing loans pursuant to section 225.28(b)(1) of Regulation Y. This corrects and replaces item B of the notice document in 88 FR 8863 (February 10, 2023).

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2023–03226 Filed 2–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10141]

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 March 17, 2023.

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:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Prescription Drug Benefit Program; *Use:* Plan sponsor and State information is used by CMS to approve contract applications, monitor compliance with contract requirements, make proper payment to plans, and ensure that correct information is disclosed to potential and current enrollees. *Form Number:* CMS–10141 (OMB control number: 0938–0964); *Frequency:* Annually; *Affected Public:* Private Sector, State, Local, or Tribal Governments; *Number of Respondents:* 4,631,393; *Total Annual Responses:* 95,802,400; *Total Annual Hours:* 25,506,943. (For policy questions regarding this collection contact Shelly Winston at 410–786–3694.)

Dated: February 9, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–03149 Filed 2–14–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–0169]

Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled ''Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' This guidance describes FDA's regulatory and enforcement priorities regarding compounding certain ibuprofen oral suspension products by outsourcing facilities to provide to hospitals and health systems for administration within the hospital or health-system and State-licensed pharmacies (including those within hospitals and health systems), and applicable Federal facilities, to dispense to patients for use at home after receiving a valid, patient-specific prescription. This final guidance revises and replaces the guidance of the same name issued on January 25, 2023. Revisions were made to describe the Agency's regulatory and enforcement priorities regarding the compounding of certain ibuprofen oral suspension products by outsourcing facilities to provide to State-licensed pharmacies (including those within hospitals and health systems), and applicable Federal facilities, to dispense to patients for use at home after receiving a valid, patient-specific prescription.

DATES: The announcement of the guidance is published in the **Federal Register** on February 15, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your

comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–0169 for ''Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ian Reynolds, Office of Compounding Quality and Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–7079.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' This guidance is being implemented without prior public comment because FDA has determined that prior public participation for this guidance is not feasible or appropriate (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(h)(1)(C)) and 21 CFR 10.115(g)(2)). This guidance is being implemented immediately to bolster consumer access to ibuprofen oral suspension products at State-licensed pharmacies and applicable Federal facilities during the winter months when respiratory infections are likely to be elevated, but it remains subject to comment in accordance with the Agency's good guidance practices.

The United States is currently experiencing a significant number of infections involving three viruses: Coronavirus Disease 2019 (COVID–19), respiratory syncytial virus (RSV), and influenza. Each of these viruses may produce fever in young children. FDA has received reports related to increased demand for pediatric fever-reducing medications, including ibuprofen oral suspension products. Further, FDA has received a number of reports related to State-licensed pharmacies experiencing challenges with obtaining these medications for use at home for fever and pain treatment of pediatric patients as well as for adults who are unable to swallow solid oral dosage forms.

As explained in the **Federal Register** of January 25, 2023, this guidance describes the Agency's regulatory and enforcement priorities regarding the compounding of certain ibuprofen oral suspension products by outsourcing facilities to provide to hospitals and health systems for administration within the hospital or health system (see 88 FR 4828). FDA has revised this guidance to also describe the Agency's regulatory and enforcement priorities regarding the compounding of certain ibuprofen oral suspension products by outsourcing facilities to provide to State-licensed pharmacies (including those within hospitals and health systems), and applicable Federal facilities, to dispense to patients for use at home after receiving a valid, patient-specific prescription. FDA is continually assessing the needs and circumstances related to the temporary policy set forth in this guidance, and as relevant needs and circumstances evolve, FDA intends to update, modify, or withdraw this policy as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Compounding Certain Ibuprofen Oral Suspension Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collection of information for current good manufacturing practice requirements has been approved under OMB control number 0910–0139. The collections of information for adverse event reporting and human drug compounding under sections 503A and 503B (21 U.S.C. 353a and 353b) of the FD&C Act have been approved under OMB control number 0910–0800. The collections of information for adverse event and product experience reporting under the MedWatch System has been approved under OMB control number 0910–0291.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov.*

Dated: February 9, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03158 Filed 2–10–23; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on December 1, 2022, through December 31, 2022. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Abdulaziz Alanazi, Martin, Tennessee, Court of Federal Claims No: 22–1753V
2. Justin Hargett, Baltimore, Maryland, Court of Federal Claims No: 22–1755V
3. Russell Probst, Covington, Louisiana, Court of Federal Claims No: 22–1757V

4. Karen Dodge, San Rafael, California, Court of Federal Claims No: 22–1759V
5. William Walkerm, Selmer, Tennessee, Court of Federal Claims No: 22–1762V
6. Suzanne Brogan, Cicero, New York, Court of Federal Claims No: 22–1768V
7. Rebecca Lake Pool, Orlando, Florida, Court of Federal Claims No: 22–1771V
8. Jennifer Noone, Union, New Jersey, Court of Federal Claims No: 22–1772V
9. Lorraine E. Ginz, Peoria, Illinois, Court of Federal Claims No: 22–1773V
10. Lee Apfel, La Crosse, Wisconsin, Court of Federal Claims No: 22–1774V
11. Julie McLaughlin, North Charleston, South Carolina, Court of Federal Claims No: 22–1776V
12. Kathleen Knouse, Aventura, Florida, Court of Federal Claims No: 22–1777V
13. Philip Weseman, St. Louis, Missouri, Court of Federal Claims No: 22–1780V
14. Nicole Jemison, Discovery Bay, California, Court of Federal Claims No: 22–1781V
15. Lorraine E. Ginz, Peoria, Illinois, Court of Federal Claims No: 22–1783V
16. Melissa Mello, Randolph, Massachusetts, Court of Federal Claims No: 22–1784V
17. Daniel Janosik on behalf of the Estate of Elva Janosik, Deceased, Boston, Maryland, Court of Federal Claims No: 22–1785V
18. Gwendolyn Kieft, Phoenix, Arizona, Court of Federal Claims No: 22–1787V
19. Laurence Chitlik, Cambridge, Maryland, Court of Federal Claims No: 22–1790V
20. April York on behalf of A. Y., Phoenix, Arizona, Court of Federal Claims No: 22–1796V
21. Deborah Helldoerfer, Hilliard, Ohio, Court of Federal Claims No: 22–1798V
22. Brittany Moran Ogilvie on behalf of A. O., Chicago, Illinois, Court of Federal Claims No: 22–1799V
23. Dennis A. Kopolovich, Monroeville, Pennsylvania, Court of Federal Claims No: 22–1805V
24. Mary G. Dowd, Bridgewater, Massachusetts, Court of Federal Claims No: 22–1806V
25. Daizhanea Gaines, Baltimore, Maryland, Court of Federal Claims No: 22–1808V
26. Patrick B. Highland, Raleigh, North Carolina, Court of Federal Claims No: 22–1809V
27. Theresa Grillo, Deerfield Beach, Florida, Court of Federal Claims No: 22–1810V
28. Jessica Kennedy, Westerville, Ohio, Court of Federal Claims No: 22–1812V
29. Angela Risner, Waukee, Iowa, Court of Federal Claims No: 22–1813V
30. Margaret Schellhaas, Conneaut Lake, Pennsylvania, Court of Federal Claims No: 22–1819V
31. Sheela Tailor, Raleigh, North Carolina, Court of Federal Claims No: 22–1820V
32. Jeanie Dehart-Manzo, Hood River, Oregon, Court of Federal Claims No: 22–1822V
33. Deborah Carpenter, Washington, District of Columbia, Court of Federal Claims No: 22–1823V
34. Sandra L. Abbott, Baltimore, Maryland, Court of Federal Claims No: 22–1824V
35. Kevin C. McCarthy, Denver, Colorado, Court of Federal Claims No: 22–1825V
36. Marla Kay Sommerfield, Rochester, Minnesota, Court of Federal Claims No: 22–1830V
37. Paul Braun, Jr., Pennsburg, Pennsylvania, Court of Federal Claims No: 22–1831V
38. Michelle Eubanks on behalf of K. L., Phoenix, Arizona, Court of Federal Claims No: 22–1832V
39. Elizabeth Miller, Phoenix, Arizona, Court of Federal Claims No: 22–1833V
40. Heather Nattkemper, Ashburn, Virginia, Court of Federal Claims No: 22–1838V
41. Vivian Oliver, New York, New York, Court of Federal Claims No: 22–1852V
42. Cindy O'Connor, Williamsport, Pennsylvania, Court of Federal Claims No: 22–1853V
43. Youn Hee Lee, Phoenix, Arizona, Court of Federal Claims No: 22–1855V
44. Tiffany Hudson, Phoenix, Arizona, Court of Federal Claims No: 22–1856V
45. Kelli O'Connell, Lawrenceville, Georgia, Court of Federal Claims No: 22–1859V
46. Keith Pillischafske, Champaign, Illinois, Court of Federal Claims No: 22–1860V
47. Bennett C. Meltzer, Orange, California, Court of Federal Claims No: 22–1861V
48. Alyssa Robinson, Phoenix, Arizona, Court of Federal Claims No: 22–1862V
49. Jessica Brown, Phoenix, Arizona, Court of Federal Claims No: 22–1863V
50. Stella Cook, Bryan, Texas, Court of Federal Claims No: 22–1864V
51. Rebecca Pick, Phoenix, Arizona, Court of Federal Claims No: 22–1866V
52. Kathryn Kirchner, Grand Haven, Michigan, Court of Federal Claims No: 22–1867V
53. Kaitlyn Wilson, Phoenix, Arizona, Court of Federal Claims No: 22–1876V
54. Denise Heinle on behalf of the Estate of Virgil Heinle, Deceased, St. Louis, Missouri, Court of Federal Claims No: 22–1877V
55. Dawn A. McNair, Fayetteville, North Carolina, Court of Federal Claims No: 22–1878V
56. Sean F. Rowell, II, New Lisbon, Wisconsin, Court of Federal Claims No: 22–1879V
57. Michelle Bridges, Marion, Indiana, Court of Federal Claims No: 22–1881V
58. Melissa Ballard on behalf of Estate of Kenneth Wayne Ballard, Deceased, Henderson, Nevada, Court of Federal Claims No: 22–1884V
59. George Ling, Greensboro, North Carolina, Court of Federal Claims No: 22–1886V
60. Beatriz Bowman, Arlington, Texas, Court of Federal Claims No: 22–1889V
61. Janmarie Mazzone, San Jose, California, Court of Federal Claims No: 22–1891V
62. Tiffany Brooks, Queens, New York, Court of Federal Claims No: 22–1892V
63. Rachel Magoon, Vancouver, Washington, Court of Federal Claims No: 22–1893V
64. James Stanfield, Surprise, Arizona, Court of Federal Claims No: 22–1894V
65. Stephanie Cox, Raleigh, North Carolina, Court of Federal Claims No: 22–1895V
66. James M. Helm, Aventura, Florida, Court of Federal Claims No: 22–1896V
67. Khadijah Hasan on behalf of A. S., Aventura, California, Court of Federal Claims No: 22–1897V
68. Elizabeth Cameron, Aurora, Colorado, Court of Federal Claims No: 22–1898V
69. Mitchell Foster, Boston, Massachusetts, Court of Federal Claims No: 22–1899V
70. Betty Farmer, Marshall, Michigan, Court of Federal Claims No: 22–1900V
71. Kenyondra Langford on behalf of J. S., Phoenix, Arizona, Court of Federal Claims No: 22–1901V
72. Jessica Richardson, Greenville, North Carolina, Court of Federal Claims No: 22–1902V

73. Lauralee Miller, Murray, Utah, Court of Federal Claims No: 22–1903V
74. Ciena Westrich, Phoenix, Arizona, Court of Federal Claims No: 22–1906V
75. Randy Ritchie, Savannah, Georgia, Court of Federal Claims No: 22–1907V
76. Lisa Snell on behalf of K. W., Phoenix, Arizona, Court of Federal Claims No: 22–1909V
77. Suzanne Meeley, Drexel Hill, Pennsylvania, Court of Federal Claims No: 22–1911V
78. Gonzalo Lopez and Rosalia Lopez on behalf of A. L., Phoenix, Arizona, Court of Federal Claims No: 22–1912V
79. Chelsea Hughes, Olney, Maryland, Court of Federal Claims No: 22–1917V
80. Tiffany Taylor on behalf of C. T., Stanford, Kentucky, Court of Federal Claims No: 22–1918V
81. Aidan Walsh, Boston, Massachusetts, Court of Federal Claims No: 22–1919V
82. Aubrielle Smythe, Huntsville, Alabama, Court of Federal Claims No: 22–1920V
83. Sakinah Wood, Atlanta, Georgia, Court of Federal Claims No: 22–1924V
84. Alexander Kurk, St. Petersburg, Florida, Court of Federal Claims No: 22–1930V
85. Joseph Pilcher, Los Angeles, California, Court of Federal Claims No: 22–1931V
86. John D. Sherwood, Lexington, Ohio, Court of Federal Claims No: 22–1934V
87. Lorraine Martin, Port Orange, Florida, Court of Federal Claims No: 22–1936V
88. Lorraine Martin, Port Orange, Florida, Court of Federal Claims No: 22–1937V
89. Anwesa Paul, Westfield, New Jersey, Court of Federal Claims No: 22–1938V
90. Danielle Spiller, Manalapan, New Jersey, Court of Federal Claims No: 22–1939V
91. Elizabeth Cimino, Phoenix, Arizona, Court of Federal Claims No: 22–1940V
92. Prisca Thomas, Beverly Hills, California, Court of Federal Claims No: 22–1941V

[FR Doc. 2023–03184 Filed 2–14–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; Renewal of Centers of Biomedical Research Excellence (COBRE) (Phase 2).

Date: March 2–3, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN18–01, Bethesda, Maryland 20892, 301–594–3663, *sidorova@nigms.nih.gov*.

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03174 Filed 2–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; George M. O'Brien Kidney Consortium Review.

Date: March 29–31, 2023.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, 301–594–2242, *jerkinsa@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03175 Filed 2–14–23; 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 Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: March 15, 2023.

Time: 1:00 p.m. to 5:00 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 3G54, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Hitendra S. Chand, 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 3G54, Rockville, MD 20852, (240) 627–3245, *hiten.chand@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: February 9, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03173 Filed 2–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: March 14, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Biobehavioral Processes.

Date: March 14–15, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Courtney M. Pollack, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3671, *courtney.pollack@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Kidney and Urological Sciences.

Date: March 15, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA RM 22–022: DS–I Africa RFAs.

Date: March 15–16, 2023.

Time: 9:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis-Chronic Fatigue Syndrome.

Date: March 15, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kondratyevad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Drug Development and Therapeutics (CDDT).

Date: March 16–17, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: March 16–17, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kathryn Partlow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1016D, Bethesda, MD 20892, (301) 594–2138, *partlowkc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: March 16–17, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Steven Anthony Ripp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3010, *steven.ripp@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR: International and Cooperative Projects for Global Emerging Leaders Award.

Date: March 16, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Biological Chemistry, Biophysics, and Assay Development.

Date: March 16–17, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Harold Laity, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8254, *laityjh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Maximizing Investigators Research Award (MIRA) for Early Stage Investigators (R35—Clinical Trial Optional).

Date: March 16–17, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zubaida Saifudeen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–3029, *zubaida.saifudeen@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Metabolism and Reproductive Sciences.

Date: March 16, 2023.

Time: 12:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–362: Planning Grant for Global Infectious Disease Research Training Program.

Date: March 16, 2023.

Time: 12:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5997, *shinako.takada@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03172 Filed 2–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0093]

Declaration of Owner and Declaration of Consignee When Entry Is Made by an Agent

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension without change of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than April 17, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0093 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of Owner and Declaration of Consignee When Entry is made by an Agent.

OMB Number: 1651–0093.

Form Number: CBP Form 3347, 3347A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Abstract: CBP Form 3347, *Declaration of Owner,* is a declaration from the owner of imported merchandise stating that he/she agrees to pay additional and increased duties, therefore releasing the importer of record from paying such duties. This form must be filed within 90 days after the date of entry. CBP Form 3347 is provided for by 19 CFR 24.11 and 141.20.

When entry is made in a consignee's name by an agent who has knowledge

of the facts and who is authorized under a proper power of attorney by that consignee, a declaration from the consignee on CBP Form 3347A, *Declaration of Consignee When Entry is Made by an Agent,* shall be filed with the entry documentation or entry summary. If this declaration is filed, then no bond to produce a declaration of the consignee is required. CBP Form 3347A is provided for by 19 CFR 141.19(b)(2).

CBP Forms 3347 and 3347A are authorized by 19 U.S.C. 1485(d) and are accessible at *http://www.cbp.gov/newsroom/publications/forms*.

Type of Information Collection: Declaration of Owner (Form 3347).

Estimated Number of Respondents: 900.

Estimated Number of Annual Responses per Respondent: 6.

Estimated Number of Total Annual Responses: 5,400.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 540.

Type of Information Collection: Declaration of Importer Form (3347A).

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 6.

Estimated Number of Total Annual Responses: 300.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 30.

Dated: February 10, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–03206 Filed 2–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0080]

Deferral of Duty on Large Yachts Imported for Sale

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension without change of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than April 17, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0080 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1651–0080.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Abstract: This collection of information is required to ensure compliance with 19 U.S.C. 1484b, which provides that an otherwise dutiable yacht that exceeds 79 feet in length, is used primarily for recreation or pleasure, and had been previously sold by a manufacturer or dealer to a retail customer, may be imported without the payment of duty if the yacht is imported with the intention to offer it for sale at a boat show in the United States. The statute provides for the deferral of payment of duty until the yacht is sold but specifies that the duty deferral period may not exceed 6 months. This collection of information is provided for by 19 CFR 4.94a and 19 CFR 4.95, which requires the submission of information to CBP such as the name and address of the owner of the yacht, the dates of cruising in the waters of the United States, information about the yacht, and the ports of arrival and departure.

Type of Information Collection: Deferral of Duty on Large Yachts Imported for Sale.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 50 hours.

Dated: February 10, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–03192 Filed 2–14–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Forced Labor Technical Expo

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of Forced Labor Technical Expo.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will convene the Forced Labor Technical Expo in Washington, DC, on Tuesday, March 14, 2023, and Wednesday, March 15, 2023. The event will feature industry presentations on the latest technologies in supply chain transparency, as well as panel discussions on topics such as forced labor initiatives and future technologies, with the U.S. Department of Homeland Security (DHS), CBP personnel, and other U.S. Government agencies. Members of the international trade community and other interested parties are encouraged to attend.

DATES: Tuesday, March 14, 2023 (opening remarks and industry presentations, including a DHS-led panel discussion, 8 a.m. to 5 p.m., EST), and Wednesday, March 15, 2023 (opening remarks and industry presentations, including a CBP-led panel discussion, 8 a.m. to 5 p.m., EST).

ADDRESSES: The Forced Labor Technical Expo will be held at the Ronald Reagan Building Atrium located at 1300 Pennsylvania Avenue NW, Washington, DC 20004.

Registration: Members of the public who intend to participate in person should register using the online instructions at *https://www.cbp.gov/trade/forced-labor-technical-expo-2023* by 5 p.m., EST, on March 1, 2023. Space is limited. A registration fee will not be required for this event.

The Forced Labor Technical Expo will also be available globally through a live stream. For complete coverage of the event, interested parties can locate the live stream link on the CBP website at *https://www.cbp.gov/trade/forced-labor-technical-expo-2023.*

Members of the public who are registered to attend and who need to cancel should do so by 5 p.m. EST on March 8, 2023, using the online instructions at *https://www.cbp.gov/trade/forced-labor-technical-expo-2023.* For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Office of Trade Relations at *tradeevents@cbp.dhs.gov* as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Johanna Estes, Office of Trade, at (202) 594–7933 or via email at *tradeevents@cbp.dhs.gov.* The most current Forced Labor Technical Expo information can be found at *https://www.cbp.gov/trade/forced-labor-technical-expo-2023.*

SUPPLEMENTARY INFORMATION: This document announces that U.S. Customs and Border Protection (CBP) will convene the Forced Labor Technical Expo in Washington, DC, on Tuesday, March 14, 2023, and Wednesday, March 15, 2023. The Forced Labor Technical Expo offers a forum for industry to provide the international trade community with information about the latest technologies that can aid in securing and managing the flow of goods. The event will showcase the latest innovations in supply chain technology to help improve trade transparency and compliance with trade laws, with an emphasis on compliance with 19 U.S.C. 1307, as amended, and the Uyghur Forced Labor Prevention Act, Public Law 117–78.

The Forced Labor Technical Expo will feature panels composed of U.S. Department of Homeland Security and CBP personnel, as well as representatives from other U.S. Government agencies. The panel discussions will address U.S. Government agency initiatives and future innovations in supply chain transparency.

Technology providers interested in sharing relevant technologies should visit *https://www.cbp.gov/trade/forced-labor-technical-expo-2023* for details.

The Forced Labor Technical Expo agenda can be found on the CBP website at *https://www.cbp.gov/trade/forced-labor-technical-expo-2023.*

Dated: February 10, 2023.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2023–03227 Filed 2–14–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2022–0141; FXES111607MRG01–234–FF07CAMM00]

Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for the Southern Beaufort Sea Stock of Polar Bears in the Prudhoe Bay Unit of the North Slope of Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; proposed incidental harassment authorization; notice of availability of draft environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, in response to a request under the Marine Mammal Protection Act of 1972, as amended, from BP America Production Company, propose to authorize nonlethal incidental take by harassment of small numbers of Southern Beaufort Sea (SBS) polar bears (*Ursus maritimus*) between issuance and December 14, 2023. The applicant requested this authorization for take by harassment that may result from activities associated with closure, remediation, and rehabilitation of the Foggy Island Bay State No. 1 gravel pad in the Prudhoe Bay area of the North Slope of Alaska. We estimate that this project may result in the nonlethal incidental take by harassment of up to three SBS polar bears. This proposed authorization, if finalized, will be for up to three takes of polar bears by Level B harassment only. No take by injury or mortality is requested, expected, or proposed to be authorized.

DATES: Comments on this proposed incidental harassment authorization and the accompanying draft environmental assessment must be received by March 17, 2023.

ADDRESSES: *Document availability:* You may view this proposed incidental harassment authorization, the application package, supporting information, draft environmental assessment, and the list of references cited herein at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2022–0141 or these documents may be requested from the person listed under **FOR FURTHER INFORMATION CONTACT**.

- *Comment submission:* You may submit comments on the proposed authorization by one of the following methods:
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2022–0141, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.
- *Electronic submission:* Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2022–0141.

We will post all comments at *https://www.regulations.gov.* You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we

will be able to do so. See Request for Public Comments for more information.

FOR FURTHER INFORMATION CONTACT: Stephanie Burgess, U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, Alaska 99503, by email at *R7mmmregulatory@fws.gov* or by telephone at 1–800–362–5148. 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:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361, *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18, at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region during a period of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (Service or we). According to the MMPA, the Service shall allow this incidental taking by harassment if we make findings that the total of such taking for the 1-year period:

(1) is of small numbers of marine mammals of a species or stock;

(2) will have a negligible impact on such species or stocks; and

(3) will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue an authorization that sets forth the following, where applicable:

(a) permissible methods of taking;

(b) means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses; and

(c) requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term ''take'' means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal. ''Harassment'' means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as ''Level A harassment''), or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as ''Level B harassment'').

The terms ''negligible impact'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27 (*i.e.,* regulations governing small takes of marine mammals incidental to specified activities) as follows: ''Negligible impact'' is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. ''Unmitigable adverse impact'' means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term ''small numbers'' is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impacts'' as two separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc.* v. *Evans,* 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term ''least practicable adverse impact'' is not defined in the MMPA or its enacting regulations. For this IHA, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of project activities, but not so restrictive as to make project activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, we shall issue an IHA, which may set forth the following, where applicable: (i) permissible methods of taking; (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal-dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting take by harassment.

Summary of Request

On September 1, 2022, the Service received a request on behalf of BP America Production Company (BPAPC) for authorization to take by nonlethal incidental harassment small numbers of SBS polar bears (*Ursus maritimus*) during closure, remediation, and rehabilitation of the Foggy Island State No. 1 wellpad in the Prudhoe Bay Area of the North Slope of Alaska for a period between issuance and December 14, 2023. Their request also included a proposed Human–Polar Bear Interaction Plan. The applicant discussed operational timelines and mitigation measures with the Service prior to request submittal. On September 21, 2022, the Service requested clarification on several aspects of the request. The BPAPC resubmitted their request, including clarifying information, on September 26, 2022. The Service deemed this request (hereafter referred to as the ''Request'') adequate and complete on September 27, 2022.

Description of Specified Activities and Specified Geographic Region

The specified activities described in the Request consist of closure, remediation, and rehabilitation of the Foggy Island State No. 1 pad (hereafter referred to as the ''pad'') in the Prudhoe Bay Area (figure 1). The abandoned pad contains contaminated materials and foam insulation that will be removed and disposed of in accordance with the Foggy Island Bay State No. 1 Revised Corrective Action Plan (ERM Alaska, Inc. 2022a).

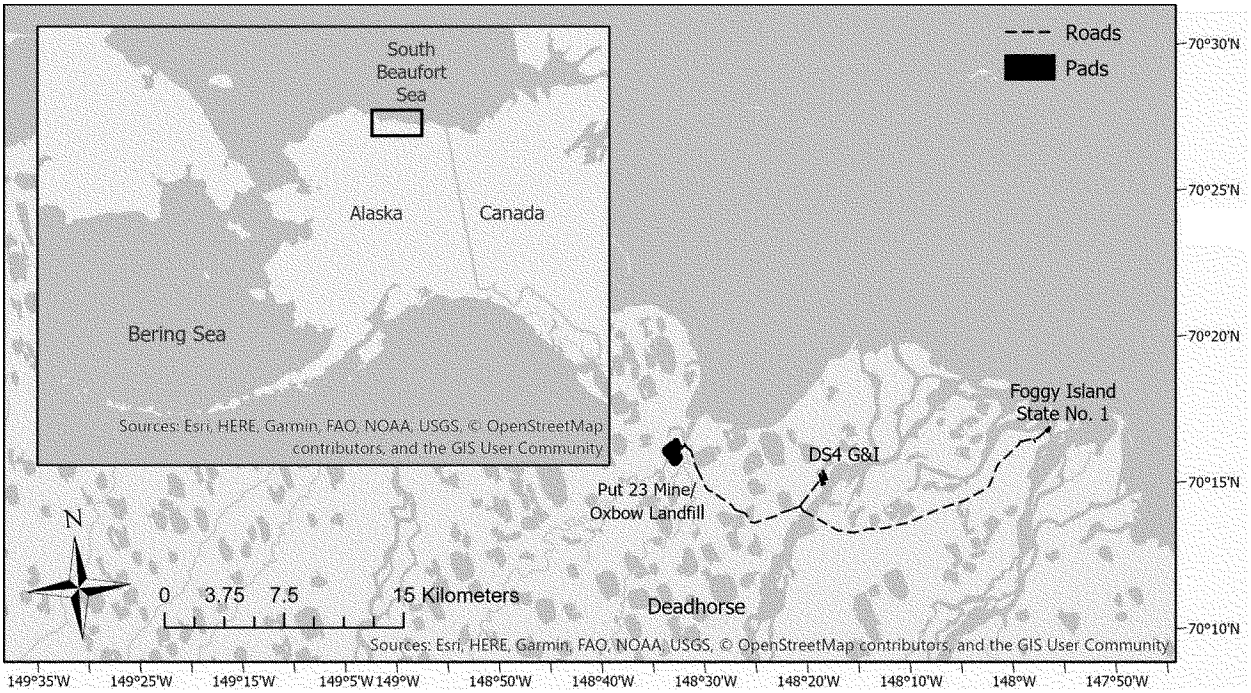

Figure 1—Specific geographic region of the Foggy Island State No. 1 wellpad in the Prudhoe Bay Area of the North Slope of Alaska.

Maternal Den Surveys

BPAPC will utilize two aerial infrared (IR) maternal den surveys to identify any active polar bear dens in the area. The surveyors will use IR cameras on fixed-wing aircrafts with flights flown between 245–457 meters (800–1,500 feet) above ground level at a speed of <185 km/h (<115 mph). These surveys will be concentrated on areas within 1.6 km (1 mi) of project activities that would be suitable for polar bear denning activity such as drainages, banks, bluffs, or other areas of topographic relief.

Ice Road and Ice Pad Construction

There exist no permanent roads that lead to the pad. Therefore, a 1.7-kilometer (km) (1.06-mile [mi]) ice road will be constructed between the Endicott Causeway and the pad for access. Additionally, a small, 0.2-km (0.12-mi) spur ice-road to a nearby lake for procuring ice chips will be required. The BPAPC will also construct an ice pad totaling 7.663 acres (ac) surrounding the gravel pad to stage and maneuver equipment. Ice road and pad construction will begin with pre-packing, which will take 2 days, followed by road and pad construction. The construction phase is anticipated to last 8 days.

Site Remediation

The pad currently contains an inactive exploratory well, several areas of confirmed soil contamination, and foam board, all of which require remediation. The BPAPC will construct a debris collection fence around the existing gravel pad and clear the area of snow. They will then excavate the well cellar, cut the well casing, and plug the abandoned exploration well. They will use an excavator to extract the soil and foam board, segregate clean from contaminated materials, and transport contaminated materials for disposal off site.

Material Disposal

Contaminated materials will be transported using dump trucks via ice road and then gravel road to the grind and inject facility found at DS4 pad in the Prudhoe Bay area. Foam board will be transported to the Oxbow Landfill. After disposing of the foam board, dump trucks will stop at the nearby Put 23 mine site to pick up clean organic backfill for site rehabilitation.

Site Rehabilitation

Clean, organic backfill from the Put 23 mine will be used to restore the pad to natural grade. During a 5-day period in the summer of 2023, a five-person crew will be transported to the former pad site via airboat to reseed the pad with indigenous vegetation. The location will also be treated with fertilizer at a rate of 200 pounds per acre with 10-20-20 N-P-K to promote seeding success. Fertilizer rates or types may change at the recommendation of the Alaska Plant Materials Center.

Description of Marine Mammals in the Specified Geographic Region

The polar bear is the only species of marine mammal under the Service's jurisdiction likely found within the specified geographic region. Information on range, stocks, biology, and climate impacts on polar bears can be found in the final rule published by the Service on August 5, 2021, implementing the *2021–2026 Beaufort Sea ITR* (86 FR 42982, August 5, 2021) as well as in Appendix A of the supplemental information (available as described above in **ADDRESSES**).

Potential Impacts of the Specified Activities on Marine Mammals

Anthropogenic activities may affect polar bears in numerous ways. SBS polar bears are typically distributed in offshore areas associated with multiyear pack ice from mid-November to mid-July, and they can be found in large numbers and high densities on barrier islands, along the coastline, and in the nearshore waters of the Beaufort Sea from mid-July to mid-November. This distribution leads to a significantly higher number of human–polar bear encounters on land and at offshore structures during the open-water period

(mid-July to mid-November) than at other times of the year.

A majority of on-land polar bear observations documented by the Service occur within 2 km (1.2 mi) of the coastline, which overlaps with the location for a portion of these specified activities. Encounters are more likely to occur during the fall at locations on or near the coast. Polar bear interaction plans, training, and monitoring have the potential to reduce human–polar bear encounters and the risks to polar bears and humans when encounters occur. Polar bear interaction plans detail the policies and procedures that the associated facilities and personnel will implement to avoid attracting and interacting with polar bears and to minimize impacts to the polar bears. Interaction plans also detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel.

The noises, sights, and smells produced by the proposed project activities could disturb and elicit variable responses from polar bears. Noise disturbance can originate from either stationary or mobile sources. Stationary sources include ice pad construction, well plugging, material removal and dumping, grading, and remediation activities. Mobile sources include vehicle traffic over gravel and ice roads and airboat trips.

The potential behavioral reaction of polar bears to the specified activities can vary by activity type. Noise generated on the ground by well plugging or material removal and grading activity may cause a behavioral (*e.g.,* escape response) or physiologic response (*e.g.,* increased heart rate, hormonal response) (Harms et al. 1997, Tempel and Gutierrez 2003). The available studies of polar bear behavior indicate that the intensity of polar bear reaction to noise disturbance may vary based on previous interactions, sex, age, and maternal status (Dyck and Baydack 2004, Anderson and Aars 2008).

Effects to Denning Polar Bears

The Service monitors known polar bear dens around the North Slope discovered either opportunistically or during planned surveys for tracking marked polar bears and detecting polar bear dens. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. To identify any active polar bear dens in the area, BPAPC included in their Request plans to utilize aerial infrared (IR) maternal den surveys as well as handheld and/or vehicle-mounted IR of all areas with snow accumulation surrounding the pad weekly. If a polar bear den is located, activities are required to avoid the den by 1.6 km (1 mi). When a previously unknown den is discovered in proximity to ongoing activities, BPAPC will implement mitigation measures such as the 1.6-km (1-mi) activity exclusion zone around the den and 24-hour monitoring of the site.

The responses of denning polar bears to disturbance and the consequences of these responses can vary throughout the denning process. We divide the denning period into four stages when considering impacts of disturbance: den establishment, early denning, late denning, and post-emergence; definitions and descriptions are located in the *2021–2026 Beaufort Sea ITR* (86 FR 42982, August 5, 2021).

Estimated Take

The applicant requested authorization only for take by Level B harassment, and the Service is proposing to authorize only take by Level B harassment for this IHA. Level B harassment for nonmilitary readiness activities means any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering. Human-caused changes in behavior that disrupt biologically significant behaviors or activities for the affected animal indicate take by Level B harassment under the MMPA. Such reactions include, but are not limited to, the following:

- Fleeing (running or swimming away from a human or a human activity);
- Displaying a stress-related behavior such as jaw or lip-popping, front leg stomping, vocalizations, circling, intense staring, or salivating;
- Abandoning or avoiding preferred movement corridors such as ice floes, leads, polynyas, a segment of coastline, or barrier islands;
- Using a longer or more difficult route of travel instead of the intended path;
- Interrupting breeding, sheltering, or feeding;
- Loss of hunting opportunity due to disturbance of prey; or
- Any interruption in normal denning behavior that does not cause injury, den abandonment, or early departure of the family group from the den site.

This list is not meant to encompass all possible behaviors; other behavioral responses may also be indicative of Level B harassment. Relatively minor changes in behavior such as increased vigilance or a short-term change in direction of travel are not likely to disrupt biologically important behavioral patterns, and the Service does not view such minor changes in behavior as indicative of Level B harassment.

Surface Interactions

Impact Area

To assess the area of potential impact from the project activities, we calculate the area affected by project activities where harassment is possible. We refer to this area as a zone or area of influence. Behavioral response rates of polar bears to disturbances are highly variable, and data to support the relationship between distance to polar bears and disturbance is limited. Dyck and Baydack (2004) found sex-based differences in the frequencies of vigilance bouts of polar bears in the presence of vehicles on the tundra. However, in their summary of polar bear behavioral response to ice-breaking vessels in the Chukchi Sea, Smultea et al. (2016) found no difference between reactions of males, females with cubs, or females without cubs. During the Service's coastal aerial surveys, 99 percent of polar bears that responded in a way that indicated possible Level B harassment (polar bears that were running when detected or began to run or swim in response to the aircraft) did so within 1.6 km (1 mi), as measured from the ninetieth percentile horizontal detection distance from the flight line. Similarly, Andersen and Aars (2008) found that female polar bears with cubs (the most conservative group observed) began to walk or run away from approaching snowmobiles at a mean distance of 1,534 m (0.95 mi). Thus, while future research into the reaction of polar bears to anthropogenic disturbance may indicate a different zone of potential impact is appropriate, the current literature suggests that the application of a 1.6 km (1.0 mi) disturbance zone will encompass the vast majority of polar bear harassment events.

Estimated Harassment

We estimated Level B harassment using the spatio-temporally specific encounter rates and temporally specific harassment rates derived in the *2021–2026 Beaufort Sea ITR* (86 FR 42982, August 5, 2021) in conjunction with BPAPC's project operations footprint. Table 1 provides the definition for each variable used in the take formulas.

TABLE 1—DEFINITIONS OF VARIABLES USED IN TAKE ESTIMATES OF NON-DENNING POLAR BEARS ON THE COAST OF THE NORTH SLOPE OF ALASKA

Variable	Definition
B_{es}	bears encountered in zone of potential impact for the entire season.
a_c	coastal exposure area.
a_i	inland exposure area.
r_o	occupancy rate.
e_{ci}	coastal ice season bear-encounter rate in bears/season.
e_{ii}	inland ice season bear-encounter rate in bears/season.
t_i	ice season harassment rate.
B_t	number of estimated Level B harassment events.

The variables defined above were used in a series of formulas to ultimately estimate the total harassment from surface-level interactions. Encounter rates were originally calculated as polar bears encountered per square kilometer per season. As a part of their Request, BPAPC provided the Service with digital geospatial files and project dates that were used to determine the maximum expected human occupancy (*i.e.,* rate of occupancy (r_o)) for each season. We assumed 100 percent human occupancy during activities. Using the buffer tool in ArcGIS, we created a spatial file of a 1.6-km (1-mi) buffer around all proposed structures and transit routes. The areas of impact were then clipped by coastal and inland zone shapefiles to determine the coastal areas of impact (a_c) and inland areas of impact (a_i) for each activity category. We then used spatial files of the coastal and inland zones to determine the area in coastal versus inland zones for each season.

Impact areas were multiplied by the appropriate encounter rate to obtain the number of polar bears expected to be encountered in an area of interest per season (B_{es}). The equation below (equation 1) provides an example of the calculation of polar bears encountered in the ice season for an area of interest in the coastal zone.

$$B_{es} = a_c * e_{ci}$$

Equation 1

To generate the number of estimated Level B harassments for each area of interest, we multiplied the number of polar bears in the area of interest per season by the proportion of the season the area is occupied, the rate of occupancy, and the harassment rate (equation 2).

$$B_t = B_{es} * S_p * r_o * t_i$$

Equation 2

Methods for Modeling the Effects of Den Disturbance

Probability for the Possibility of Take

When modeling take associated with den disturbance, we applied probabilities for the possibility of take of denning bears that were established through the analysis of 57 case studies as described in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021). These probabilities were specific to exposure type and denning stage.

Den Simulation

Although the impact area of the BPAPC's activities does not span the entire North Slope of Alaska, we simulated dens across the entire North Slope ranging from the areas identified as denning habitat (Durner et al. 2006, 2013; Blank 2013) contained within the National Petroleum Reserve–Alaska (NPRA) in the west to the Canadian border in the east. By simulating dens across the North Slope and then focusing our analysis as needed to the potential impact area, we ensured the distribution of dens was consistent with the estimated number of dens in three different regions of northern Alaska provided by Atwood et al. (2020). These included the NPRA, the area between the Colville and Canning Rivers (CC), and Arctic National Wildlife Refuge. The mean estimated number of dens in each region during a given winter were as follows: 12 dens (95 percent CI: 3–26) in the NPRA, 26 dens (95 percent CI: 11–48) in the CC region, and 14 dens (95 percent CI: 5–30) in the Arctic National Wildlife Refuge (Atwood et al. 2020). For each iteration of the model (described below), we drew a random sample from a gamma distribution for each of the regions based on the above parameter estimates, which allowed uncertainty in the number of dens in each area to be propagated through the modeling process. Specifically, we used the method of moments (Hobbs and Hooten 2015) to develop the shape and rate parameters for the gamma distributions as follows: NPRA (122/5.82,12/5.82), CC (262/9.52,26/9.52), and Arctic National Wildlife Refuge (142/6.32,14/6.32).

Because not all areas in northern Alaska are equally used for denning and some areas do not contain the requisite topographic attributes required for sufficient snow accumulation for den excavation, we did not randomly place dens on the landscape. Instead, we followed a similar approach to that used by Wilson and Durner (2020) with some additional modifications to account for differences in denning ecology in the CC region related to a preference to den on barrier islands and a general (but not complete) avoidance of actively used industrial infrastructure. Using the U.S. Geological Survey (USGS—polar bear den catalogue (Durner et al. 2020), we identified polar bear dens that occurred on land in the CC region and that were identified either by GPS-collared polar bears or through systematic surveys for denning polar bears (Durner et al. 2020). This process resulted in a sample of 37 dens of which 22 (*i.e.,* 60 percent)

occurred on barrier islands. For each iteration of the model, we then determined how many of the estimated dens in the CC region occurred on barrier islands versus the mainland.

To make this determination, we first took a random sample from a binomial distribution to determine the expected number of dens from the den catalog (Durner et al. 2020) that should occur on barrier islands in the CC region during that given model iteration; n_{barrier} = Binomial (37, 22/37), where 37 represents the total number of dens in the den catalogue (Durner et al. 2020) in the CC region suitable for use (as described above) and 22/37 represents the observed proportion of dens in the CC region that occurred on barrier islands. We then divided n_{barrier} by the total number of dens in the CC region suitable for use (*i.e.,* 37) to determine the proportion of dens in the CC region that should occur on barrier islands (*i.e.,* p_{barrier}). We then multiplied p_{barrier} with the simulated number of dens in the CC region (rounded to the nearest whole number) to determine how many dens were simulated to occur on barrier islands in the region.

In the NPRA, the den catalogue (Durner et al. 2020) data indicated that two dens occurred outside of defined denning habitat (Durner et al. 2013), so we took a similar approach as with the barrier islands to estimate how many dens occur in areas of the NPRA with the den habitat layer during each iteration of the model; n_{habitat}~Binomial(15, 13/15), where 15 represents the total number of dens in NPRA from the den catalogue (Durner et al. 2020) suitable for use (as described above), and 13/15 represents the observed proportion of dens in NPRA that occurred in the region with den habitat coverage (Durner et al. 2013). We then divided n_{habitat} by the total number of dens in NPRA from the den catalogue (*i.e.,* 15) to determine proportion of dens in the NPRA region that occurred in the region of the den habitat layer (p_{habitat}). We then multiplied p_{habitat} with the simulated number of dens in NPRA (rounded to the nearest whole number) to determine the number of dens in NPRA that occurred in the region with the den habitat layer. Because no infrastructure exists and no activities are proposed to occur in the area of NPRA without the den habitat layer, we considered the potential impacts of activity only to those dens simulated to occur in the region with denning habitat identified (Durner et al. 2013).

To account for the potential influence of industrial activities and infrastructure on the distribution of polar bear selection of den sites, we again relied on a subset of dens from the den catalogue (Durner et al. 2020) discussed above. We further restricted the dens to only those occurring on the mainland because no permanent infrastructure occurred on barrier islands with identified denning habitat (Durner et al. 2006). We then determined the minimum distance to permanent infrastructure that was present when the den was identified. From these values, we determined that 15 percent of mainland dens were located within 3 km (1.86 mi) of infrastructure. We again took a similar approach as with the barrier islands to estimate how many dens occur within 3 km (1.86 mi) of infrastructure; given the simulated number of dens on the CC mainland region, n_{mainland}, as determined above, we then calculated the number of dens within 3 km (1.86 mi) of infrastructure as $n_{\text{infrastructure}}$=Binomial($n_{\text{mainland}}$,0.15) for each iteration of the model, with the remainder of simulated mainland dens placed greater than 3 km (1.86 mi) from infrastructure.

To inform where dens are most likely to occur on the landscape, we developed a kernel density map by using known den locations in northern Alaska identified either by GPS-collared polar bears or through systematic surveys for denning polar bears (Durner et al. 2020). To approximate the distribution of dens, we used an adaptive kernel density estimator (Terrell and Scott 1992) applied to

n

observed den locations, which took the form

$$f(s) \propto \theta n \boldsymbol{\Sigma} nik(s - sih(s)) f\mathbf{s} \propto \theta n \boldsymbol{\Sigma} ink\mathbf{s} - \mathbf{s}ih\mathbf{s},$$

where the adaptive bandwidth

$$h(s) = (\beta 0 + \beta 1 I(si \in M) I(s \in M))$$
$$\beta 2 h\mathbf{s} = \beta 0 + \beta 1 I\mathbf{s}i \in M\mathbf{s} \in M\beta 2$$

for the location of the *i*th den and each location

s

in the study area. The indicator functions allowed the bandwidth to vary abruptly between the mainland

M

and barrier islands. The kernel *k* was the Gaussian kernel, and the parameters

$$\theta, \beta 0, \beta 1, \beta 2\theta, \beta 0, \beta 1, \beta 2$$

were chosen based on visual assessment so that the density estimate approximated the observed density of dens and our understanding of likely den locations in areas with low sampling effort.

As in previous take authorizations, the kernel density map we used for this analysis considers denning habitat in the CC region, where more denning occurs on barrier islands compared to the other two regions. We restricted the distance to infrastructure component to only the CC region because it is the region that contains the vast majority of oil and gas infrastructure and has had some form of permanent industrial infrastructure present for more than 50 years.

To simulate dens on the landscape, we first sampled in which kernel grid cell a den would occur based on the underlying relative probability (figure 2) within a given region using a multinomial distribution. Once a cell was selected, the simulated den was randomly placed on the denning habitat (Durner et al. 2006, 2013; Blank 2013) located within that grid cell. For dens being simulated on mainland in the CC region, an additional step was required. We first assigned a simulated den to be in one of two bins, within 3 km, or greater than 3 km from infrastructure, as described above. Based on the distance to infrastructure bin assigned to a simulated den, we subset the kernel density grid cells that occurred in the same distance bin and then selected a grid cell from that subset based on their underlying probabilities using a multinomial distribution. Then, similar to other locations, a den was randomly placed on denning habitat within that grid cell.

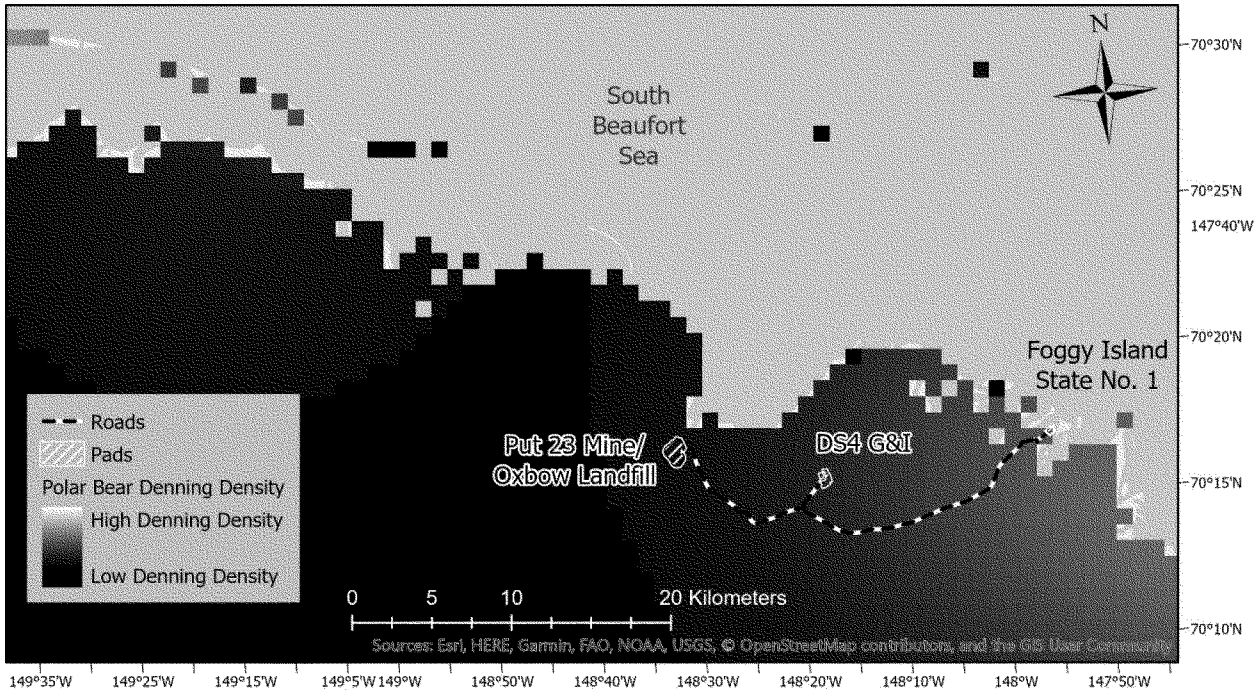

Figure 2—Depiction of the proposed project area on the North Slope of Alaska with the underlying relative density of polar bear dens.

For each simulated den, we assigned dates of key denning events: Den entrance, birth of cubs, when cubs reached 60 days of age, den emergence, and departure from the den site after emergence. These represent the chronology of each den under undisturbed conditions. We selected the entrance date for each den from a normal distribution parameterized by entrance dates of radio-collared polar bears in the SBS subpopulation that denned on land included in Rode et al. (2018) and published in USGS (2018; n=52, mean=11 November, SD=18 days). These data were restricted to those dens with both an entrance and emergence date identified and where a polar bear was in the den for greater than or equal to 60 days to reduce the chances of including non-maternal polar bears using shelter dens. Sixty days represents the minimum age of cubs before they have a chance of survival outside of the den. Thus, denning periods of less than 60 days in the den have a higher chance of reflecting shelter dens use.

We truncated this distribution to ensure that all simulated dates occurred within the range of observed values (*i.e.,* September 12 to December 22) identified in USGS (2018) to ensure that entrance dates were not simulated during biologically unreasonable periods given that the normal distribution allows some probability (albeit small) of dates being substantially outside a biologically reasonable range. We selected a date of birth for each litter from a normal distribution with the mean set to ordinal date 348 (*i.e.,* December 15) and standard deviation of 10, which allowed the 95 percent CI to approximate the range of birth dates (*i.e.,* December 1 to January 15) identified in the peer-reviewed literature (Messier et al. 1994, Van de Velde et al. 2003). We ensured that simulated birth dates occurred after simulated den entrance dates. We selected the emergence date as a random draw from an asymmetric Laplace distribution with parameters μ=81.0, σ=4.79, and p=0.79 estimated from the empirical emergence dates in Rode et al. (2018) and published in USGS (2018, n=52) of radio-collared polar bears in the SBS stock that denned on land using the mleALD function from package 'ald' (Galarzar and Lachos 2018) in program R (R Core Development Team 2021). We constrained simulated emergence dates to occur within the range of observed emergence dates (January 9 to April 9, again to constrain dates to be biologically realistic) and not to occur until after cubs were 60 days old.

Finally, we assigned the number of days each family group spent at the den site post-emergence based on values reported in three behavioral studies, Smith et al. (2007, 2013) and Robinson (2014), which monitored dens immediately after emergence (n=25 dens). Specifically, we used the mean (8.0) and SD (5.5) of post-emergence days spent at dens monitored in these studies to parameterize a gamma distribution using the method of moments (Hobbs and Hooten 2015) with a shape parameter equal to 8.02/5.52 and a rate parameter equal to 8.0/5.52; we selected a post-emergence, pre-departure duration for each den from this distribution. We restricted time spent at the den post emergence to occur within the range of times observed in Smith et al. (2007, 2013) and Robinson (2014) (*i.e.,* 2–23 days, again to ensure biologically realistic times spent at the den site were simulated). Additionally, we assigned each den a litter size by drawing the number of cubs from a multinomial distribution with probabilities derived from litter sizes (n=25 litters) reported in Smith et al. (2007, 2013) and Robinson (2014).

Because there is some probability that a female naturally emerges with zero cubs, we also wanted to ensure this scenario was captured. It is difficult to parameterize the probability of litter size equal to zero because it is rarely observed. We, therefore, assumed that dens in the USGS (2018) dataset that had denning durations less than the shortest den duration where a female was later observed with cubs (*i.e.,* 79 days) had a litter size of zero. Only three

bears in the USGS (2018) data met this criterion, leading to an assumed probability of a litter size of zero at emergence being 0.07. We, therefore, assigned the probability of 0, 1, 2, or 3 cubs as 0.07, 0.15, 0.71, and 0.07, respectively.

Infrastructure and Human Activities

The model developed by Wilson and Durner (2020) provides a template for estimating the level of potential impact to denning polar bears of specified activities while also considering the natural denning ecology of polar bears in the region. The approach developed by Wilson and Durner (2020) also allows for the incorporation of uncertainty in both the metric associated with denning bears and in the timing and spatial patterns of specified activities when precise information on those activities is unavailable. We used the geospatial files provided with the Request, which included start and end dates, to estimate the potential for take of denning polar bears due to BPAPC's proposed activities.

Model Implementation

For each iteration of the model, we first determined which dens were exposed to the simulated activities and infrastructure. We assumed that any den within 1.6 km (1 mi) of infrastructure or human activity was exposed and had the potential to be disturbed as numerous studies have suggested a 1.6-km buffer is sufficient to reduce disturbance to denning polar bears (MacGillivray et al. 2003, Larson et al. 2020, Owen et al. 2021). For dens exposed to human activity, we then identified the stage in the denning cycle when the exposure occurred based on the date range of the activities to which the den was exposed. We then determined whether the exposure elicited a response by the denning polar bear based on probabilities derived from the reviewed case studies.

Level B harassment was applicable to both adults and cubs, if present, whereas Level A harassment (*i.e.,* serious injury and non-serious injury) and lethal take were applicable only to cubs. The specified activities had a discountable risk of a direct collision with a den, which may result in a fatal injury to a sow or could reduce her future reproductive potential. For the ice road and ice pad, crews will constantly be on the lookout for signs of denning, use vehicle-based forward-looking infrared cameras and handheld IR to scan for dens, and will largely avoid crossing topographic features (*i.e.,* areas of relief that may sustain long-lasting snow drifts) suitable for denning. Thus, the risk of running over a den was deemed to have a probability so low that it was discountable.

The case studies used to inform the post-emergence period include one where an individual fell into a den and caused the female to abandon her cubs. Due to its unique and non-analogous fact pattern, this case study was excluded from the calculation of disturbance probabilities applied to our analysis, which led to a 0 percent probability of lethal take and a 100 percent probability of non-serious-injury Level A harassment.

If a Level A harassment or lethal take was simulated to occur, a den was not allowed to be disturbed again during the subsequent denning periods because the outcome of that denning event was already determined. As noted above, Level A harassments and lethal takes applied only to cubs because specified activities would not result in those levels of take for adult females. Adult females, however, could still receive Level B harassment during the den establishment period or any time cubs received Level B harassment, Level A harassment (*i.e.,* serious injury and non-serious injury), or lethal take.

We developed the code to run this model in program R (R Core Development Team 2021) and ran 10,000 iterations of the model (*i.e.,* Monte Carlo simulation) to derive the estimated number of animals disturbed and associated levels of take.

Model Results

Estimates for different levels of harassment takes are presented in table 2. The distributions of both non-serious Level A harassment and serious Level A harassment/lethal takes were non-normal and heavily skewed, as indicated by markedly different mean and median values. The heavily skewed nature of these distributions has led to a mean value that is not representative of the most common model result (*i.e.,* the mode), which for both non-serious Level A and serious Level A harassment/lethal takes is 0.0. Due to the low probabilities (0.011 for non-serious Level A harassment and 0.017 for serious Level A harassment/lethal take) of one or more non-serious or serious injury Level A harassment/lethal take for the proposed IHA period, combined with the mode of 0.0 injurious takes, we do not anticipate the specified activities will result in non-serious-injury or serious-injury Level A harassment or lethal take of polar bears and would not authorize Level A harassment with this authorization nor was it requested.

TABLE 2—RESULTS OF THE DEN DISTURBANCE MODEL FOR ALL PROPOSED ACTIVITIES DURING THE 1-YEAR IHA PERIOD

[Estimates are provided for the probability, mean, median, and 95 percent confidence intervals (CI) for take by Level B harassment, non-serious-injury take by Level A harassment, and serious-injury take by Level A harassment/lethal take for denning bears only. The probabilities represent the probability of ≥1 take by Level B harassment of a denning polar bear occurring during a given winter]

Level B Harassment:	
Probability	0.120
Mean	0.145
Median	0.0
95% CI	0–1
Non-Serious Level A Harassment:	
Probability	0.011
Mean	0.020
Median	0.0
95% CI	0–0
Serious Level A Harassment/Lethal:	
Probability	0.017
Mean	0.033
Median	0.0
95% CI	0–0

Sum of Take From All Sources

The applicant proposes to conduct closure, remediation, and rehabilitation activities at the Foggy Island State No. 1 pad in the Prudhoe Bay area of the North Slope of Alaska upon issuance of the required IHA and extending through December 14, 2023. A summary of total estimated take via Level B harassment during the project by source is provided in table 3. The potential for lethal take and Level A harassment was explored. Lethal take or Level A harassment would not occur outside of denning polar bears because the level of sound and visual stimuli experienced by polar bear on the surface would not be significant enough to result in injury or death. Denning polar bears, however, may be subject to repeated exposures, significant energy expenditure from den abandonment or departure, or potential impacts to a cub if the den is abandoned or departed prematurely. The probability of greater than or equal to one lethal or serious Level A take of denning polar bears is 0.017.

TABLE 3—TOTAL ESTIMATED TAKES BY LEVEL B HARASSMENT OF POLAR BEARS AND SOURCE

Source	Number of estimated level B harassment events
Winter activities—Bears on the surface	1

TABLE 3—TOTAL ESTIMATED TAKES BY LEVEL B HARASSMENT OF POLAR BEARS AND SOURCE—Continued

Source	Number of estimated level B harassment events
Winter activities—Denning bears	1
Summer reclamation activities	1
Total	3

Critical Assumptions

In order to conduct this analysis and estimate the potential amount of Level B harassment, we made several critical assumptions.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. Likely a portion of animals respond in ways that indicate some level of disturbance but do not experience significant biological consequences. Our estimates do not account for variable responses by polar bear age and sex; however, sensitivity of denning polar bears was incorporated into the analysis. The available information suggests that polar bears are generally resilient to low levels of disturbance. Females with dependent young and juvenile polar bears are physiologically the most sensitive (Andersen and Aars 2008) and most likely to experience harassment from disturbance. There is not enough information on composition of the SBS polar bear stock in the proposed project area to incorporate individual variability based on age and sex or to predict its influence on harassment estimates. Our estimates are derived from a variety of sample populations with various age and sex structures, and we assume the exposed population will have a similar composition and, therefore, the response rates are applicable.

The estimates of behavioral response presented here do not account for the individual movements of animals away from the project area or habituation of animals to noise or human presence. Our assessment assumes animals remain stationary (*i.e.,* density does not change). There is not enough information about the movement of polar bears in response to specific disturbances to refine this assumption.

Determinations and Findings

In making this finding, we considered the best available scientific information, including: the biological and behavioral characteristics of the species, the most recent information on species distribution and abundance within the area of the specified activities, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential sources of disturbance caused by the project, and the potential responses of marine mammals to this disturbance. In addition, we reviewed applicant-provided materials, information in our files and datasets, published reference materials, and species experts.

Small Numbers

For our small numbers determination, we consider whether the estimated number of polar bears to be subjected to incidental take is small relative to the population size of the species or stock.

1. We estimate BPAPC's proposed specified activities in the specified geographic region will cause no more than harassment (Level B) to three polar bears during the 1-year period of this proposed IHA (see *Sum of Take from All Sources*). Take of 3 animals is 0.33 percent of the best available estimate of the current SBS stock size of 907 animals (Bromaghin et al. 2015, Atwood et al. 2020) ((3÷907) × 100≈0.33 percent) and represents a ''small number'' of polar bears of that stock.

2. Within the specified geographic region is small relative to the range of the SBS stock of polar bears. SBS polar bears range well beyond the boundaries of the proposed IHA region. As such, the IHA region itself represents only a subset of the potential area in which this species may occur. Thus, the Service concludes that a small portion of the SBS polar bear population may be present in the specified geographic region during the time of the specified activities.

Small Numbers Conclusion

Therefore, we propose a finding that BPAPC's specified activities will take by Level B harassment only small numbers of the SBS polar bear stock because: (1) Only a small proportion of the polar bear stock will overlap with the areas where the specified activities will occur; and (2) the number of SBS polar bears estimated to be subjected to Level B harassment via BPAPC's specified activities—3—represents less than 0.5 percent of the latest stock estimate of 907 polar bears, and is thus a small number relative to the size of the stock.

Negligible Impact

We propose a finding that any incidental take by Level B harassment resulting from the proposed project cannot be reasonably expected to, and is not reasonably likely to, adversely affect the stock through effects on annual rates of recruitment or survival and will, therefore, have no more than a negligible impact on the SBS stock of polar bears.

Polar bears are likely to respond to the specified activities with temporary behavioral modification or displacement if in the area during the project dates. These reactions are unlikely to have consequences for the long-term health, reproduction, or survival of affected animals. Most animals will respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected animals are expected to resume normal behaviors soon after exposure with no lasting consequences. We anticipate up to two polar bears may respond to disturbance with a biologically significant behavioral change during winter activities, and up to one polar bear may respond to disturbance with a biologically significant behavioral change during summer reclamation activities.

The proposed activities will result in disturbances within an industrial area with previously existing and consistent disturbance. While the specified activities include the construction of a short ice road and ice pad during polar bear denning season, there is limited denning habitat near these temporary structures. Further, the denning habitat that is within 1.6 km (1 mi) of the ice road and ice pad is also within the impact area of frequently traveled permanent roads. Thus, no previously undisturbed denning habitat will be impacted by the specified activities. Reclamation activities are planned for a short period (5 days) in the summer; however, BPAPC has committed to conducting these activities prior to mid-July to avoid the increase in polar bears on land that begins in late July.

Our proposed finding of negligible impact applies to incidental take associated with the proposed activities as mitigated by the avoidance and minimization measures identified in BPAPC's mitigation and monitoring plan. These mitigation measures are designed to minimize interactions with and impacts to polar bears. These measures and the monitoring and reporting procedures are required for the validity of our finding and are a necessary component of the proposed IHA. For these reasons, we propose a finding that the proposed project will have a negligible impact on the SBS stock of polar bears.

Impact on Subsistence Use

Based on past community consultations, locations of hunting areas, no anticipated overlap of hunting areas and Industry projects, and the best scientific information available, including monitoring data from similar activities, we propose a finding that take caused by the proposed closure, reclamation, and remediation activities in the project area will not have an unmitigable adverse impact on the availability of polar bears for taking for subsistence uses during the proposed timeframe.

While polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the Utqiagvik, Nuiqsut, and Kaktovik communities, their harvest is important to Alaska Natives. The project activities are in an established industrial area, with the closest known common polar bear harvest locations greater than 10 miles (16.1 km) away. The BPAPC will be required to notify the Village of Kaktovik and Village of Nuiqsut of the planned activities and document any discussions of potential conflict. The BPAPC must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of polar bears are minimized. Should such a concern be voiced, development of Plans of Cooperation (POC), which must identify measures to minimize any adverse effects, will be required. The POC will ensure that project activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how BPAPC will work with the affected Alaska Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bears, as warranted.

The Service has not received any reports and is not aware of information that indicates that polar bears are being or will be deterred from hunting areas or impacted in any way that diminishes their availability for subsistence use by pad closure, remediation, and reclamation. If there is evidence that these activities are affecting the availability of polar bears for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Least Practicable Adverse Impact

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of the specified activities, the best available scientific information, and monitoring data during Industry activities in the specified geographic region. We propose a finding that the mitigation measures included within BPAPC's Request will ensure least practicable adverse impacts on polar bears, their habitat, and the subsistence harvest of polar bears (ERM Alaska, Inc. 2022b).

Polar bear den surveys before activities begin during the denning season, the resulting 1.6-km (1-mi) operational exclusion zone around all known polar bear dens, use of handheld and vehicle-mounted IR devices to scan areas of snow accumulation weekly, and restrictions on the timing and types of activities in the vicinity of dens will ensure that impacts to denning female polar bears and their cubs are minimized during this critical time. In early conversations with the Service prior to the submittal of their Request, BPAPC committed to complete summer reclamation activities prior to mid-July to avoid the increase in polar bears along the coast in late July and August. These measures are outlined in a polar bear interaction plan that was developed in coordination with the Service and is part of BPAPC's request for this IHA. Based on the information we currently have regarding den disturbance and temporal constraints, we concluded that the mitigation measures outlined in BPAPC's Request (ASTAC 2021) and incorporated into this authorization will minimize impacts from the specified activities to the extent practicable.

A number of additional mitigation measures were considered but determined to be not practicable. These measures are listed below:

- *Spatial and temporal restrictions on surface activity*—Some spatial and temporal restrictions of operations were included in BPAPC's Request; however, additional restrictions would not be practicable for the specified activities based on other regulatory and safety requirements.
- *One-mile buffer around all known polar bear denning habitat*—Requiring a 1-mile buffer around all known polar bear denning habitat is not practicable as most of the planned transit routes and existing and temporary infrastructure used by BPAPC occurs within 1 mile of denning habitat, and they would not be able to shut down all operations based on other regulatory and safety requirements.
- *Establishment of corridors for sow and cub transit to the sea ice*—As there is no data to support the existence of natural transit corridors to the sea ice, establishment of corridors in the IHA area would be highly speculative. Therefore, no mitigative benefit would be realized by their establishment.
- *Requirement of third-party neutral marine mammal observers*—Due to the limited size of the specified activities, it is not practicable to hire third-party marine mammal observers. Additional crew may require additional transit vehicles, which could increase disturbance.

Required Determinations

National Environmental Policy Act (NEPA)

We have prepared a draft environmental assessment in accordance with the NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that authorizing the nonlethal, incidental, unintentional take by Level B harassment of up to three individuals from the SBS stock of polar bears in the specified geographic region during the specified activities during the regulatory period would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this incidental harassment authorization is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

Endangered Species Act

Under the Endangered Species Act (ESA) (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. Prior to issuance of a Final IHA, the Service will complete intra-Service consultation under section 7 of the ESA on our proposed issuance of an IHA. These evaluations and findings will be made available on the Service's website at *https://ecos.fws.gov/ecp/report/biological-opinion*.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Tribes in developing programs for healthy ecosystems. We are also required to consult with Alaska Native Claims Settlement Act (ANCSA) corporations in certain circumstances. We seek their full and meaningful participation in

evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture, and to make information available to Alaska Natives. Our efforts are guided by the following policies and directives:

(1) The Native American Policy of the Service (January 20, 2016);

(2) The Alaska Native Relations Policy (currently in draft form; see 87 FR 66255, November 3, 2022);

(3) Executive Order 13175 (January 9, 2000);

(4) Department of the Interior Secretarial Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317 (December 1, 2011), 3342 (October 21, 2016), and 3403 (November 15, 2021) as well as Director's Order 227 (September 8, 2022);

(5) The Alaska Government-to-Government Policy (a departmental memorandum issued January 18, 2001); and

(6) the Department of the Interior's policies on consultation with Alaska Native Tribes and organizations.

We have evaluated possible effects of the proposed IHA on federally recognized Alaska Native Tribes and ANCSA Corporations. The Service has determined that authorizing the Level B harassment of up to three polar bears from BPAPC's specified activities would not have any Tribal implications or ANCSA Corporation implications and, therefore, Government-to-Government consultation or Government-to-ANCSA Corporation consultation is not necessary. However, we invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the IHA/POC public comment process.

Proposed Authorization

We propose to authorize the nonlethal, incidental take by Level B harassment of three individuals from the SBS stock of polar bears. Authorized take will be limited to disruption of behavioral patterns that may be caused by the closure, remediation, and rehabilitation of the Foggy Island State No. 1 pad, and support activities conducted by BP America Production Company (BPAPC) in the Prudhoe Bay Area of the North Slope of Alaska, from finalization of this IHA through December 14, 2023. We do not anticipate or authorize any take by Level A harassment, injury, or death to polar bears resulting from these activities.

A. General Conditions for the IHA for BPAPC

1. Activities must be conducted in the manner described in the revised Request dated September 26, 2022, for an IHA and in accordance with all applicable conditions and mitigation measures. The taking of polar bears whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised Request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

2. If project activities cause unauthorized take (*i.e.,* take of more than three polar bears from the SBS stock, a form of take other than Level B harassment, or take of one or more polar bears through methods not described in the IHA), BPAPC must take the following actions:

i. Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety);

ii. Report the details of the incident to the Service within 48 hours; and

iii. Suspend further activities until the Service has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

3. All operations managers, vehicle operators, and vessel operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

4. This IHA will apply to activities associated with the proposed project as described in this document and in BPAPC's revised Request. Changes to the proposed project without prior authorization may invalidate the IHA.

5. The BPAPC's revised Request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The revised Request includes:

i. The BPAPC's original *Request for an IHA,* dated September 1, 2022, which includes BPAPC's *Polar Bear Interaction Plan and geospatial files;*

ii. The BPAPC's response to request for further information from the Service, dated September 27, 2022; and

iii. The BPAPC's revised *Request for an IHA,* dated September 26, 2022.

6. Operators will allow Service personnel or the Service's designated representative to visit project work sites to monitor for impacts to polar bears and subsistence uses of polar bears at any time throughout project activities so long as it is safe to do so. ''Operators'' are all personnel operating under BPAPC's authority, including all contractors and subcontractors.

The BPAPC must implement the following policies and procedures to avoid interactions and minimize to the greatest extent practicable any adverse impacts on polar bears, their habitat, and the availability of these marine mammals for subsistence uses.

B. General Avoidance Measures

1. The BPAPC must cooperate with the Service and other designated Federal, State, and local agencies to monitor and mitigate the impacts of activities on polar bears.

2. Trained and qualified personnel must be designated to monitor at all times for the presence of polar bears, initiate mitigation measures, and monitor, record, and report the effects of the activities on polar bears. The BPAPC must provide all operators with polar bear awareness training prior to their participation in project activities.

3. A Service-approved polar bear safety, awareness, and interaction plan must be on file with the Service Marine Mammals Management office and available onsite. The interaction plan must include:

i. A description of the proposed activity (*i.e.,* a summary of the plan of operations during the proposed activity);

ii. A food, waste, and other attractants management plan;

iii. Personnel training policies, procedures, and materials;

iv. Site-specific polar bear interaction risk evaluation and mitigation measures;

v. Polar bear avoidance and encounter procedures; and

vi. Polar bear observation and reporting procedures.

The BPAPC must contact potentially affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the Service documentation of communications as described in D. *Measures To Reduce Impacts to Subsistence Users.*

4. *Mitigation measures for winter activities.* The BPAPC must undertake the following activities to limit disturbance around known polar bear dens:

i. The BPAPC must obtain record of two aerial infrared (AIR) surveys of all denning habitat located within 1.6 km (1 mi) of specified activities in an attempt to identify maternal polar bear dens. The first survey obtained must have occurred between December 1,

2022, and December 25, 2022, and the second survey obtained must have occurred between December 15, 2022, and January 10, 2023, with at least 24 hours occurring between the completion of the first survey and the beginning of the second survey.

ii. Handheld infrared surveys must be performed weekly for dens throughout the duration of the Project along the snow push piles around the Foggy Island Bay State No. 1 pad and snow drifts greater than 4.9 feet (1.5 meters [m]) in height along the ice road.

iii. All observed or suspected polar bear dens must be reported to the Service prior to the initiation of activities.

iv. If a suspected den site is located, BPAPC will immediately consult with the Service to analyze the data and determine if additional surveys or mitigation measures are required. The Service will determine whether the suspected den is to be treated as a putative den for the purposes of this IHA.

v. Operators must observe a 1.6-km (1-mi) operational exclusion zone around all putative polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should a suspected den be discovered within 1 mile of activities, work must cease, and the Service contacted for guidance. The Service will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

vi. In determining the denning habitat that requires surveys, use the den habitat map developed by the USGS. A map of potential coastal polar bear denning habitat can be found at: *https://www.usgs.gov/centers/asc/science/polar-bear-maternal-denning?qt-science_center_objects=4#qt-science_center_objects.*

5. *Mitigation measures for in-water activities.*

i. Prior to and during airboat use, BPAPC must assess the access route for polar bears. While workers are transiting in the airboat, a designated occupant must be assigned to scan the surrounding area for marine mammals.

ii. Vessels must always maintain the maximum distance possible from polar bears. Vessels should never approach within an 805-m (0.5-mi) radius of polar bears unless it is an emergency.

iii. Vessels should take all practical measures (*i.e.,* reduce speed, change course heading) to avoid polar bears in the water.

C. Monitoring

1. Operators must provide onsite observers and implement the Service-approved polar bear avoidance and interaction plan to apply mitigation measures, monitor the project's effects on polar bears and subsistence uses, and evaluate the effectiveness of mitigation measures.

2. All onsite observers shall complete a Service-provided training course designed to familiarize individuals with monitoring and mitigation activities identified in the polar bear avoidance and interaction plan.

3. Onsite observers must be present during all operations and must record all polar bear observations, identify and document potential harassment, and work with personnel to implement appropriate mitigation measures.

4. Operators shall cooperate with the Service and other designated Federal, State, and local agencies to monitor the impacts of project activities on polar bears. Where information is insufficient to evaluate the potential effects of activities on polar bears and the subsistence use of this species, BPAPC may be required to participate in joint monitoring efforts to address these information needs and ensure the least practicable impact to this resource.

5. Operators must allow Service personnel or the Service's designated representative to visit project work sites to monitor impacts to polar bear and subsistence use at any time throughout project activities so long as it is safe to do so.

D. Measures To Reduce Impacts to Subsistence Users

BPAPC must conduct its activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of polar bears for subsistence uses.

1. The BPAPC will be required to develop a Service-approved POC if, through community consultation, concerns are raised regarding impacts to subsistence harvest or Alaska Native Tribes and organizations.

2. If required, BPAPC will implement the Service-approved POC.

3. Prior to conducting the work, BPAPC will take the following steps to reduce potential effects on subsistence harvest of polar bears:

i. Avoid work in areas of known polar bear subsistence harvest;

ii. Notify the Native Village of Kaktovik and the Native Village of Nuiqsit of the proposed project activities;

iii. Work to resolve any concerns of potentially affected Alaska Native Tribal organizations and corporations regarding the project's effects on subsistence hunting of polar bears;

iv. If any unresolved or ongoing concerns of potentially affected Alaska Native Tribal organizations and corporations remain, modify the POC in consultation with the Service and subsistence stakeholders to address these concerns; and

v. Implement Service-required mitigation measures that will reduce impacts to subsistence users and their resources.

E. Reporting Requirements

The BPAPC must report the results of monitoring to the Service Marine Mammals Management office via email at: *fw7_mmm_reports@fws.gov.*

1. *In-season monitoring reports.*

2. *Activity progress reports.* The BPAPC must: Notify the Service at least 48 hours prior to the onset of activities;

3. *Polar bear observation reports.* The BPAPC must report, within 48 hours, all observations of polar bears and potential polar bear dens during any project activities. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but need not be limited to:

i. Date and time of each observation;

ii. Locations of the observer and polar bears (GPS coordinates if possible);

iii. Number of polar bears;

iv. Sex and age class—adult, subadult, cub (if known);

v. Observer name and contact information;

vi. Weather, visibility, and if at sea, sea state, and sea-ice conditions at the time of observation;

vii. Estimated closest distance of polar bears from personnel and facilities;

viii. Type of work being conducted at time of sighting;

ix. Possible attractants present;

x. Polar bear behavior—initial behavior when first observed (*e.g.,* walking, swimming, resting, etc.);

xi. Potential reaction—behavior of polar bear potentially in response to presence or activity of personnel and equipment;

xii. Description of the encounter;

xiii. Duration of the encounter; and

xiv. Mitigation actions taken.

4. *Human polar bear interaction reports.* The BPAPC must report all human polar bear interaction incidents immediately, and not later than 48 hours after the incident. Human polar bear interactions include:

i. Any situation in which there is a possibility for unauthorized take. For

instance, when project activities exceed those included in an IHA, when a mitigation measure was required but not enacted, or when injury or death of a polar bear occurs. Reports must include all information specified for an observation report in paragraphs (3)(i)–(xiv) of this section E, a complete detailed description of the incident, and any other actions taken.

ii. Injured, dead, or distressed polar bears that are clearly not associated with project activities (*e.g.,* animals found outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must also be reported to the Service immediately, and not later than 48 hours after discovery. Photographs, video, location information, or any other available documentation must be included.

5. *Final report.* The results of monitoring and mitigation efforts identified in the polar bear avoidance and interaction plan must be submitted to the Service for review within 90 days of the expiration of this IHA. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final report must include, but need not be limited to:

i. Copies of all observation reports submitted under the IHA;

ii. A summary of the observation reports;

iii. A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

iv. Analysis of factors affecting the visibility and detectability of polar bears during monitoring;

v. Analysis of the effectiveness of mitigation measures;

vi. A summary and analysis of the distribution, abundance, and behavior of all polar bears observed; and

vii. Estimates of take in relation to the specified activities.

Request for Public Comments

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or both documents, you may submit your comments by either of the methods described in **ADDRESSES**. Please identify if you are commenting on the proposed authorization, draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The Service will consider all comments that are received before the close of the comment period (see **DATES**). The Service does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Peter Fasbender,

Assistant Regional Director for Fisheries and Ecological Services, Alaska Region.

[FR Doc. 2023–03185 Filed 2–14–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2023–N004; FX.IA167209TRG00- FF09W12000–223]

Theodore Roosevelt Genius Prize Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference/web meeting.

SUMMARY: The U.S. Fish and Wildlife Service gives notice of a teleconference/web meeting of the Theodore Roosevelt Genius Prize Advisory Council, in accordance with the Federal Advisory Committee Act.

DATES:

Teleconference/web meeting: The Council will meet Thursday, March 9, 2023, from 11 a.m. until 5 p.m. (Eastern Time).

Registration: Registration is required. The deadline for registration is March 6, 2023.

Accessibility: The deadline for accessibility accommodation requests is March 2, 2023. Please see *Accessibility Information,* below.

ADDRESSES: The meeting will be held via teleconference and broadcast over the internet. To register and receive the web address and telephone number for participation, contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) or visit the Council's website at *https://www.fws.gov/program/theodore-roosevelt-genius-prize-advisory-council.*

FOR FURTHER INFORMATION CONTACT: Stephanie Rickabaugh, Designated Federal Officer, by telephone at (571) 421–6758, or by email at *Stephanie_Rickabaugh@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Theodore Roosevelt Genius Prize Advisory Council was established by the John D. Dingell, Jr., Conservation, Management, and Recreation Act (Pub. L. 116–9, as amended by the America's Conservation Enhancement Act (Pub. L. 116–188)); and authorized by the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719). The Council's purpose is to advise the Secretary of the Interior regarding any opportunities for technological innovation in the six focus areas: preventing wildlife poaching and trafficking, promoting wildlife conservation, managing invasive species, protecting endangered species, nonlethally managing human-wildlife conflict, and reducing human-predator conflict.

This meeting is open to the public. The meeting agenda will include Council discussion on the six focus areas, reports from subcommittees about opportunities for technological innovation, and opportunities for public comment. The final agenda and other related meeting information will be posted on the Council's website at *https://www.fws.gov/program/theodore-roosevelt-genius-prize-advisory-council.*

Public Input

If you wish to provide oral public comment or provide a written comment for the Council to consider, contact the Council's Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than Monday, March 6, 2023.

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Interested parties should contact the Designated Federal Officer, in writing (see **FOR FURTHER INFORMATION CONTACT**), for placement on the public speaker list for this meeting. Requests to address the Council during the meeting will be accommodated in the order the

requests are received. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Designated Federal Officer up to 30 days following the meeting.

Accessibility Information

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Please contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) at least 7 business days prior to the meeting to give the U.S. Fish and Wildlife Service sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. 10.

Paul Rauch,

Assistant Director, Wildlife and Sport Fish Restoration, U.S. Fish and Wildlife Service.

[FR Doc. 2023–03135 Filed 2–14–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035337; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Antonio J. Waring, Jr. Archaeological Laboratory, University of West Georgia, Carrollton, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Antonio J. Waring, Jr. Archaeological Laboratory has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Douglas County, GA.

DATES: Repatriation of the human remains in this notice may occur on or after March 17, 2023.

ADDRESSES: Dr. Nathan R. Lawres, Laboratory Director, Antonio J. Waring, Jr. Archaeological Laboratory, University of West Georgia, 1601 Maple Street, Carrollton, GA 30118, telephone (678) 839–6454, email *nlawres@westga.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Antonio J. Waring, Jr. Archaeological Laboratory. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Antonio J. Waring, Jr. Archaeological Laboratory.

Description

In the summer of 1972, human remains representing, at minimum, two individuals were removed from the Annewakee Creek Site (9DO2) in Douglas County, GA, by Dr. Roy Dickens, a faculty member of the Anthropology Department at Georgia State University. Dickens reported on these excavations in the Southeastern Archaeological Conference Bulletin, No. 18, pp. 31–42 (see particularly pp. 36–38). Commenting on these human remains, Dickens stated, ''No burials were found in the 1972 excavations although the owner had recovered two partial skeletons in his initial grading operations'' (Dickens, 1975:38). The collection was acquired by the Antonio J. Waring Archaeological Laboratory, University of West Georgia, through a transfer of archeological collections and records from Georgia State University to West Georgia College, presently the University of West Georgia. This transfer took place in the summer of 1991, following the termination of the archeological component of the anthropology program of Georgia State University. Incomplete copies of skeletal inventories conducted at the Georgia State University Laboratory of Archaeology by R. Johnson on October 11, 1973, are the only records that accompany the Annewakee Creek Mound Collection. No known individuals were identified. No associated funerary objects are present.

Officials of the Antonio J. Waring Archaeological Laboratory have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described in this notice a represent the physical remains of two individuals of Native American ancestry based on morphological traits of the human remains and the archeological context from which they were recovered. The archeological context suggests a Middle Woodland Period chronological association, and on the basis of the ceramic types present, the human remains most likely date to A.D. 300–600. Additionally, there is a ^{14}C date of A.D. 605 ± 85 [GX2825] that was obtained from charred wood associated with Middle Woodland Period ceramics.

Further assessment of the human remains and associated collections was made by Antonio J. Waring, Jr. Archaeological Laboratory professional staff in consultation with members of the STARR Alliance, including representatives of the Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Mississippi Band of Choctaw Indians; Seminole Tribe of Florida; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and The Seminole Nation of Oklahoma.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, oral traditional, expert opinion, and other relevant information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Antonio J. Waring, Jr. Archaeological Laboratory has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 17, 2023. If competing requests for repatriation are received, the Antonio J. Waring, Jr. Archaeological Laboratory must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Antonio J. Waring, Jr. Archaeological Laboratory is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: February 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–03235 Filed 2–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035338; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Northern Colorado, Greeley, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Northern Colorado (UNC) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Weld County, CO.

DATES: Repatriation of the human remains in this notice may occur on or after March 17, 2023.

ADDRESSES: Dr. Andrew T. Creekmore III, University of Northern Colorado, 501 20th Street, Greeley, CO 80638, telephone (970) 351–2761, email *andrew.creekmore@unco.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the UNC. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the UNC.

Description

At an unknown date, human remains representing, at minimum, one individual were removed from Weld County, CO. The human remains belong to one adult female. No known individual was identified. No associated funerary objects are present.

In the 1970s, human remains representing, at minimum, one individual were removed from Weld County, CO. The human remains belong to one adult of indeterminate sex. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, biological, geographical, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the UNC has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Cheyenne and Arapaho Tribes, Oklahoma; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; Northern Arapaho Tribe of the Wind River Reservation, Wyoming; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Ute Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 17, 2023. If competing requests for repatriation are received, the UNC must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The UNC is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: February 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–03236 Filed 2–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035339; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Auburn University, Auburn, AL, and the U.S. Department of Agriculture, Forest Service, National Forests in Alabama, Montgomery, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), Auburn University and the U.S. Department of Agriculture, Forest Service, National Forests in Alabama (National Forests in Alabama) have completed an inventory of human remains and associated funerary objects and have determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Franklin, Lawrence, and Winston Counties, AL.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after March 17, 2023.

ADDRESSES: Michael Walters, Auburn University, 7030 Haley Center, Auburn, AL 36849, telephone (334) 844–5008, email *mcw0121@auburn.edu,* and Marcus Ridley, United States Forest Service-National Forests in Alabama, Supervisor's Office, 2946 Chestnut Street, Montgomery, AL 36107, telephone (334) 832–4470 Ext.103, email *marcus.ridley@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibilities of Auburn University and the National Forests in Alabama. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Auburn University and the National Forests in Alabama.

Description

At an unknown date, human remains representing, at minimum, one individual were removed from William B. Bankhead National Forest, located in Franklin, Lawrence, and Winston Counties, AL. Precise details regarding the location and manner of removal of these human remains are unknown. At an unknown date, the human remains were given to Dr. John Cottier, a professor of anthropology at Auburn University, as a donation to the University. A label accompanying the human remains states, ''From a bluff shelter in Bankhead National Forest'' and ''John Miner Gift.'' These human remains belong to a juvenile approximately 8-to-10 years old. The 38 associated funerary objects are 21 lithic fragments, 16 ceramic sherds, and one lot of faunal materials.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from a known geographic location. This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: the Treaty with the Chickasaw of 1816, the Treaty with the Cherokee of 1816, and the Indian Claims Commission (ICC) Findings of Fact from April 4, 1970. The two treaties indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma. The ICC Findings of Fact indicate that the land from which the human remains and associated funerary objects were removed is also the aboriginal land of the Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creek Indians, Seminole Tribe of Florida, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and the Thlopthlocco Tribal Town.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, Auburn University and the National Forests in Alabama have determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 38 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after March 17, 2023. If competing requests for disposition are received, Auburn University and the National Forests in Alabama must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. Auburn University and the National Forests in Alabama are responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: February 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–03237 Filed 2–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035340; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum of Natural History has completed an inventory of human remains and has determined that there is no cultural affiliation between the

human remains and any Indian Tribe. The human remains were removed from an unknown location in Montana.

DATES: Disposition of the human remains in this notice may occur on or after March 17, 2023.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Field Museum.

Description

Human remains representing, at minimum, one individual were removed from an unknown location in Montana. Sometime prior to December 1936, the mummified remains of an infant of unknown sex and age were removed from a tree burial. The human remains were donated by the Chicago Historical Society to the Field Museum in 1936. No known individual was identified. No associated funerary objects are present. A detailed assessment of the human remains was made by Field Museum staff in consultation with representatives of the Little Shell Tribe of Chippewa Indians of Montana, which requested disposition of the human remains.

Aboriginal Land

The human remains in this notice were removed from a known geographic location. This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: a treaty and an Act of Congress.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Confederated Salish and Kootenai Tribes of the Flathead Reservation; Crow Tribe of Montana; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; Little Shell Tribe of Chippewa Indians of Montana; and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after March 17, 2023. If competing requests for disposition are received, the Field Museum must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: February 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–03238 Filed 2–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035341; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Seminole Tribe of Florida, Clewiston, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Seminole Tribe of Florida has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from an unknown location within the state of Florida.

DATES: Repatriation of the human remains in this notice may occur on or after March 17, 2023.

ADDRESSES: Dr. Paul Backhouse, Tribal Historic Preservation Office, Seminole Tribe of Florida, 30290 Josie Billie Highway, PMB 1004, Clewiston, FL 33440, telephone (863) 983–6549 Ext. 12244, email *Paulbackhouse@semtribe.com.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Seminole Tribe of Florida. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Seminole Tribe of Florida.

Description

Human remains representing, at minimum, two individuals were removed from an unknown county in Florida. On October 1, 2018, the human remains were anonymously mailed to the Seminole Tribe of Florida Tribal Historic Preservation Office (THPO), where they were immediately transferred to the Seminole Police Department. Due to the apparent age of the human remains, soil staining, taphonomic damage, dental wear, and a note accompanying the human remains stating they had been removed from a Florida archeological site, the human remains were determined to be those of Native American individuals. No known

individuals were identified. No associated funerary objects are present.

Cultural affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, biological, geographical, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Seminole Tribe of Florida has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Miccosukee Tribe of Indians; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 17, 2023. If competing requests for repatriation are received, the Seminole Tribe of Florida must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Seminole Tribe of Florida is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: February 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–03239 Filed 2–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035342; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Kansas State University, Manhattan, KS

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Kansas State University has amended a Notice of Inventory Completion published in the **Federal Register** on September 11, 2006. This notice amends the minimum number of individuals in a collection removed from Saline County, MO.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after March 17, 2023.

ADDRESSES: Megan Williamson, Department of Sociology, Anthropology, and Social Work, Kansas State University, 204 Waters Hall, 1603 Old Claflin Place, Manhattan, KS 66506–4003, telephone (785) 532–6005, email *mwillia1@ksu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Kansas State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Kansas State University.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (71 FR 53468–53469, September 11, 2006). Disposition of the items in the original Notice of Inventory Completion has not occurred. The minimum number of individuals represented by the human remains from the Utlaut site, 23SA16W, is 10.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, Kansas State University has determined that:

- The human remains described in this amended notice represent the physical remains of 10 individuals of Native American ancestry.
- The 223 objects described in this amended notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Otoe-Missouria Tribe of Indians, Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 17, 2023. If competing requests for disposition are received, Kansas State University must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. Kansas State University is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.11, and § 10.13.

Dated: February 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–03240 Filed 2–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035343; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Kansas State University, Manhattan, KS

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Kansas State University has amended a Notice of Inventory Completion published in the **Federal Register** on September 22, 2017. This notice amends the minimum number of individuals and the number of associated funerary objects in a collection removed from Wyandotte County, KS.

DATES: Repatriation of the cultural items in this notice may occur on or after March 17, 2023.

ADDRESSES: Megan Williamson, Department of Sociology, Anthropology, and Social Work, Kansas State University, 204 Waters Hall, 1603 Old Claflin Place, Manhattan, KS 66506–4003, telephone (785) 532–6005, email *mwillia1@ksu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Kansas State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the summary or related records held by Kansas State University.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (82 FR 44444–44445, September 22, 2017). Repatriation of the items in the original Notice of Inventory Completion has not occurred. An additional two individuals and 117 associated funerary objects have been located and verified with the original excavation documentation, increasing the minimum number of individuals represented by the human remains and the number of associated funerary objects removed from the Calovich Mound in Wyandotte County, KS.

From the Calovich Mound site (14WY7) in Wyandotte County, KS, human remains representing, at minimum, 81 individuals were removed (previously listed as 79 individuals). The 177 associated funerary objects (previously identified as 60 associated funerary objects) are one partial bone pendant, three shell pendants, 15 shell disk beads, 43 pieces of unmodified freshwater mussel shell, 20 unmodified shells, 21 unmodified stones (including one ochre and two orange gypsum crystals), 35 ceramic body sherds, eight ceramic rim sherds, three pieces of daub, 19 pieces of worked stone (including two projectile points and one fragmented projectile point), one charcoal, and eight bone fragments.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Kansas State University has determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains represent the physical remains of 81 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 177 objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; and the Ponca Tribe of Indians of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 17, 2023. If competing requests for repatriation are received, Kansas State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. Kansas State University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, § 10.10, § 10.13, and § 10.14.

Dated: February 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–03241 Filed 2–14–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–012]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 23, 2023 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. No. 731–TA–669 (Fifth Review) (Cased Pencils from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on March 3, 2023.
5. *Outstanding action jackets:* none.

The Commission is holding this 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.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, 202–205–2595.

By order of the Commission.

Issued: February 13, 2023.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2023–03301 Filed 2–13–23; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Occupational Safety and Health Administration Alliance Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before March 17, 2023.

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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA's Alliance Program is a structure for working with groups that are committed to worker safety and health. The program enables OSHA to enter into a voluntary cooperative relationship with industry, labor and other groups to improve workplace safety and health, prevent workplace fatalities, injuries and illnesses, and to reach employers and workers that OSHA may not otherwise reach through traditional methods. OSHA collects information from organizations that are signatories to an Alliance agreement through meetings, informal conversations and data forms. OSHA will use the collected information to develop Alliance agreements, support Alliance activities and Alliance agreement objectives, and develop annual and program-wide reports. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 26, 2022 (87 FR 58377).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Occupational Safety and Health Administration Alliance Program.

OMB Control Number: 1218–0274.

Affected Public: Private Sector—Businesses or other for-profits, State and Local Governments.

Total Estimated Number of Respondents: 260.

Total Estimated Number of Responses: 4,968.

*Total Estimated Annual Time Burden:*14,318 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–03182 Filed 2–14–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–019]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We have submitted a request to the Office of Management and Budget (OMB) for approval to continue to use a currently approved information collection used by researchers who wish to do biomedical statistical research in archival records containing highly personal information. We invite you to comment on the proposed information collection.

DATES: OMB must receive written comments on or before March 17, 2023.

ADDRESSES: Send any comments and recommendations on the proposed information collection in writing to *www.reginfo.gov/public/do/PRAMain.* You can 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: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at *tamee.fechhelm@nara.gov* or by telephone at 301.837.1694 with any requests for additional information.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on December 8, 2022 (87 FR 75295) and we received no comments We are therefore submitting the described information collection to OMB for approval.

If you have comments or suggestions, they should address one or more of the following points:

(a) whether the proposed information collection is necessary for NARA to properly perform its functions;

(b) our estimate of the burden of the proposed information collection and its accuracy;

(c) ways we could enhance the quality, utility, and clarity of the information we collect;

(d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and

(e) whether this collection affects small businesses.

In this notice, we solicit comments concerning the following information collection:

Title: Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.
Estimated number of respondents: 2.
Estimated time per response: 7 hours.
Frequency of response: On occasion.
Estimated total annual burden hours: 14 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 and that the proper safeguards will be made to protect the information.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2023–03242 Filed 2–14–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of Meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold one additional meeting, by video conference, of the Humanities Panel, a federal advisory committee, in February 2023, and forty-two meetings during March 2023. Additionally, NEH rescheduled twelve Public Scholars Humanities Panel meetings originally scheduled for February 15, 2023, to later dates in February 2023 and March 2023. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: February 17, 2023

This video meeting will discuss applications for the National Digital Newspaper Program, submitted to the Division of Preservation and Access.

2. Date: February 28, 2023

This video meeting will discuss applications on the topics of Literature and Language, for the Public Scholars grant program, submitted to the Division of Research Programs.

3. Date: March 1, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Public Scholars grant program, submitted to the Division of Research Programs.

4. Date: March 2, 2023

This video meeting will discuss applications on the topics of Science, Technology, Medicine, and the Environment, for the Public Scholars grant program, submitted to the Division of Research Programs.

5. Date: March 2, 2023

This video meeting will discuss applications on the topic of American Studies, for the Public Scholars grant program, submitted to the Division of Research Programs.

6. Date: March 3, 2023

This video meeting will discuss applications on the topics of History and Religion, for the Public Scholars grant program, submitted to the Division of Research Programs.

7. Date: March 6, 2023

This video meeting will discuss applications for the Climate Smart Humanities Organizations grant program, submitted to the Office of Challenge Programs.

8. Date: March 6, 2023

This video meeting will discuss applications on the topics of Social Sciences, for the Public Scholars grant program, submitted to the Division of Research Programs.

9. Date: March 7, 2023

This video meeting will discuss applications on the topics of Philosophy, Politics, and Law, for the Public Scholars grant program, submitted to the Division of Research Programs.

10. Date: March 7, 2023

This video meeting will discuss applications on the topic of Arts, for the Public Scholars grant program, submitted to the Division of Research Programs.

11. Date: March 8, 2023

This video meeting will discuss applications on the topic of U.S. History, for Public Scholars grant program, submitted to the Division of Research Programs.

12. Date: March 9, 2023

This video meeting will discuss applications for the Climate Smart Humanities Organizations grant program, submitted to the Office of Challenge Programs.

13. Date: March 13, 2023

This video meeting will discuss applications on the topic of Biography, for the Public Scholars grant program, submitted to the Division of Research Programs.

14. Date: March 14, 2023

This video meeting will discuss applications on the topics of Film, Media, and Communications, for the Public Scholars grant program, submitted to the Division of Research Programs.

15. Date: March 14, 2023

This video meeting will discuss applications on the topic of Climate Change, for the Cultural and Community Resilience grant program, submitted to the Division of Preservation and Access.

16. Date: March 17, 2023

This video meeting will discuss applications on the topic of Art Museums, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

17. Date: March 20, 2023

This video meeting will discuss applications on the topics of Communication and Media Studies, for the Collaborative Research grant program, submitted to the Division of Research Programs.

18. Date: March 21, 2023

This video meeting will discuss applications on the topic of Cultural History, for the Media Projects Production grant program, submitted to the Division of Public Programs.

19. Date: March 21, 2023

This video meeting will discuss applications on the topic of Cultural Anthropology, for the Cultural and Community Resilience grant program, submitted to the Division of Preservation and Access.

20. Date: March 22, 2023

This video meeting will discuss applications on the topic of Humanities Podcasts, for the Media Projects Production grant program, submitted to the Division of Public Programs.

21. Date: March 22, 2023

This video meeting will discuss applications on the topics of History and Philosophy, for the Collaborative Research grant program, submitted to the Division of Research Programs.

22. Date: March 22, 2023

This video meeting will discuss applications on the topics of Native American and Latin American Studies, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

23. Date: March 23, 2023

This video meeting will discuss applications on the topics of Philosophy and Religion, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

24. Date: March 23, 2023

This video meeting will discuss applications on the topic of Art History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

25. Date: March 23, 2023

This video meeting will discuss applications on the topic of COVID–19, for the Cultural and Community Resilience grant program, submitted to the Division of Preservation and Access.

26. Date: March 24, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Media Projects Production grant program, submitted to the Division of Public Programs.

27. Date: March 24, 2023

This video meeting will discuss applications on the topics of History and Studies of Africa, Asia, and Europe, for the Collaborative Research grant program, submitted to the Division of Research Programs.

28. Date: March 24, 2023

This video meeting will discuss applications on the topics of Literature and the Arts, for the Collaborative Research grant program, submitted to the Division of Research Programs.

29. Date: March 24, 2023

This video meeting will discuss applications on the topics of European History and Literature, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

30. Date: March 24, 2023

This video meeting will discuss applications on the topic of History, for the Public Scholars grant program, submitted to the Division of Research Programs.

31. Date: March 27, 2023

This video meeting will discuss applications on the topics of Archaeology, Anthropology, and Studies of Science, for the Collaborative Research grant program, submitted to the Division of Research Programs.

32. Date: March 27, 2023

This video meeting will discuss applications on the topics of Arts and Media, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

33. Date: March 27, 2023

This video meeting will discuss applications on the topics of Libraries and Archives, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

34. Date: March 28, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Media Projects Production grant program, submitted to the Division of Public Programs.

35. Date: March 28, 2023

This video meeting—the first of four on this date—will discuss applications for the Institutes for Higher Education Faculty grant program, submitted to the Division of Education Programs.

36. Date: March 28, 2023

This video meeting—the second of four on this date—will discuss applications for the Institutes for Higher Education Faculty grant program, submitted to the Division of Education Programs.

37. Date: March 28, 2023

This video meeting—the third of four on this date—will discuss applications for the Institutes for Higher Education Faculty grant program, submitted to the Division of Education Programs.

38. Date: March 28, 2023

This video meeting—the fourth of four on this date—will discuss applications for the Institutes for Higher Education Faculty grant program, submitted to the Division of Education Programs.

39. Date: March 28, 2023

This video meeting—the first of six on this date—will discuss applications for the Institutes for K–12 Educators grant program, submitted to the Division of Education Programs.

40. Date: March 28, 2023

This video meeting—the second of six on this date—will discuss applications for the Institutes for K–12 Educators grant program, submitted to the Division of Education Programs.

41. Date: March 28, 2023

This video meeting—the third of six on this date—will discuss applications for the Institutes for K–12 Educators grant program, submitted to the Division of Education Programs.

42. Date: March 28, 2023

This video meeting—the fourth of six on this date—will discuss applications for the Institutes for K–12 Educators grant program, submitted to the Division of Education Programs.

43. Date: March 28, 2023

This video meeting—the fifth of six on this date—will discuss applications for the Institutes for K–12 Educators grant program, submitted to the Division of Education Programs.

44. Date: March 28, 2023

This video meeting—the sixth of six on this date—will discuss applications for the Institutes for K–12 Educators grant program, submitted to the Division of Education Programs.

45. Date: March 28, 2023

This video meeting will discuss applications on the topics of World Literature and Studies, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

46. Date: March 28, 2023

This video meeting will discuss applications on the topics of Communication and Social Sciences, for the Collaborative Research grant program, submitted to the Division of Research Programs.

47. Date: March 29, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Public Humanities Projects: Exhibition (Implementation) grant program, submitted to the Division of Public Programs.

48. Date: March 29, 2023

This video meeting will discuss applications on the topics of Philosophy and Social Sciences, for the Collaborative Research grant program, submitted to the Division of Research Programs.

49. Date: March 29, 2023

This video meeting will discuss applications on the topics of History and Studies of the Americas, for the Collaborative Research grant program, submitted to the Division of Research Programs.

50. Date: March 29, 2023

This video meeting will discuss applications on the topics of Collections and Access, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

51. Date: March 30, 2023

This video meeting will discuss applications on the topics of Literature and Arts, for the Collaborative Research grant program, submitted to the Division of Research Programs.

52. Date: March 30, 2023

This video meeting will discuss applications on the topics of American History and Literature, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

53. Date: March 30, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Media Projects Production grant program, submitted to the Division of Public Programs.

54. Date: March 31, 2023

This video meeting will discuss applications on the topic of Indigenous Studies, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

55. Date: March 31, 2023

This video meeting will discuss applications on the topic of Computational Analysis, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: February 9, 2023.

Jessica Graves,

Legal Administrative Specialist, National Endowment for the Humanities.

[FR Doc. 2023–03150 Filed 2–14–23; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; United States Antarctic Program (USAP) Climate Survey

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: United States Antarctic Program (USAP) Climate Survey.

OMB Control No.: 3145–0260.

Type of Request: Intent to seek approval to reinstate with revisions an information collection for three years. The primary purpose of this reinstatement is to identify and study the perceptions and perspectives of USAP participants located in Antarctica. The surveys address attitudes and concerns that will help NSF work with program participants and participating organizations to instill positive changes.

Proposed Project: In accordance with presidential memo 6646 the NSF manages the U.S. Antarctic Program including occupation of three year-round stations located on the Antarctic continent. NSF is committed to a workplace and community that fosters a climate free from sexual assault and harassment. NSF has recently completed a Sexual Assault/Harassment Prevention and Response (SAHR) program which requires reinstatement of this information collection.

Use of the Information: Disseminating a climate survey ensures accurate baseline data that will allow NSF to monitor SAHPR program progress, course correct efforts, and objectively demonstrate successes.

Burden on the Public: The Foundation estimates that an average of 1,800 respondents are expected to complete the request per year for a total of 900 burden hours annually.

Dated: February 9, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–03153 Filed 2–14–23; 8:45 am]

BILLING CODE 7555–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Special Financial Assistance Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval under the Paperwork Reduction Act of a collection of information contained in PBGC's regulation on special financial assistance. The purpose of the information collection is to gather information necessary for PBGC to operate this special financial assistance programs. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted on or before April 17, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to OMB control number 1212–0074 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to OMB control number 1212–0074. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of the collection of information may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–6563. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Section 4262 of the Employee Retirement Income Security Act of 1974 (ERISA) requires PBGC to provide special financial assistance (SFA) to certain financially troubled multiemployer plans upon application for assistance. Part 4262 of PBGC's regulations, ''Special Financial Assistance by PBGC,'' provides guidance to multiemployer pension plan sponsors on eligibility, determining the amount of SFA, content of an application for SFA, the process of applying, PBGC's review of applications, restrictions and conditions, and reporting and notice requirements.

To apply for SFA, a plan sponsor must file an application with PBGC and include information about the plan, plan documentation, and actuarial information, as specified in sections 4262.6 through 4262.9. Also, if the plan is changing certain assumptions for purposes of demonstrating its eligibility for SFA or its requested amount of SFA, then the plan sponsor may use PBGC's SFA assumptions guidance. PBGC needs the application information to review a plan's eligibility for SFA and amount of requested SFA. PBGC estimates that over the next 3 years an annual average of 59 plan sponsors will file applications for SFA with an average annual hour burden of 590 hours and an average annual cost burden of $1,770,000.

Under section 4262.10(g), a plan sponsor may, but is not required to, file a lock-in application as a plan's initial application. The lock-in application contains basic information about the plan and a statement of intent to lock-in base data. PBGC needs the information in the lock-in application to ensure that a plan sponsor intends to lock-in the plan's data. PBGC estimates that over the next 3 years an annual average of 23 plan sponsors will file lock-in applications for SFA with an average annual hour burden of 23 hours and an average annual cost burden of $18,400.

Under section 4262.16(i), a plan sponsor of a plan that has received SFA must file an Annual Statement of Compliance with the restrictions and conditions under section 4262 of ERISA and part 4262 once every year through 2051. PBGC needs the information in the Annual Statement of Compliance to ensure that a plan is compliant with the imposed restrictions and conditions. PBGC estimates that over the next 3 years an annual average of 120 plan sponsors will file Annual Statements of Compliance with an average annual hour burden of 240 hours and an average annual cost burden of $288,000.

Under section 4262.15(c), a plan sponsor of a plan with benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA must issue notices of reinstatement to participants and beneficiaries whose benefits were suspended and are being reinstated. Participants and beneficiaries need the notice of reinstatement to better understand the calculation and timing of their reinstated benefits and, if applicable, make-up payments. PBGC estimates that over the next 3 years an average of 5 plans per year will be required to send notices to participants with suspended benefits. PBGC estimates that these notices will impose an average annual hour burden of 10 hours and average annual cost burden of $10,000.

Finally, under section 4262.16(d), (f), (g), and (h), a plan sponsor must file a request for a determination from PBGC for approval for an exception under certain circumstances for SFA conditions under section 4262.16 relating to reductions in contributions, transfers or mergers, and withdrawal liability. PBGC needs the information required for a request for determination to determine whether to approve an exception from the specified condition of receiving SFA. PBGC estimates that over the next 3 years, PBGC will receive an average of 3.2 requests per year for determinations. PBGC estimates an average annual hour burden of 15.6 hours and average annual cost burden of $44,000.

The estimated aggregate average annual hour burden for the next 3 years for the information collection in part 4262 is 878.6 hours for employer and

fund office administrative, clerical, and supervisory time. The estimated aggregate average annual cost burden for the next 3 years for the information collection request in part 4262 is $2,130,400, for approximately 5,326 contract hours assuming an average hourly rate of $400 for work done by outside actuaries and attorneys. The actual hour burden and cost burden per plan will vary depending on plan size and other factors.

The collection of information under the regulation has been approved by OMB under control number 1212–0074 (expires July 31, 2023). PBGC intends to request that OMB extend its approval for 3 years. 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.

PBGC is soliciting public comments to—

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 methodologies 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.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–03159 Filed 2–14–23; 8:45 am]

BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96871; File No. SR–NYSEARCA–2023–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

February 9, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 30, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from January 31, 2023 to April 30, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Arca Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSEArca–2020–85 [4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from January 31, 2023 to April 30, 2023, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEArca–2020–85 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (''NYSE American''), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.[6] The NYSE Arca disciplinary rules were implemented on May 27, 2019.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Arca adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding

[4] *See* Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR–NYSEArca–2020–85) (''SR–NYSEArca–2020–85'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond April 30, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEArca–2020–85. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15) (''2019 Notice'').

[7] *See* NYSE Arca Equities RB–19–060 & NYSE Arca Options RB–19–02 (April 26, 2019).

[8] *See* 2019 Notice, 84 FR at 16365 & 16373–4.

need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 23, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18] On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[19] On March 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.[20] On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.[21] On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to October 31, 2022.[22] On October 17, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.[23] On October 28, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to January 31, 2023, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[24]

According to FINRA, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[25] For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[26] The daily average number of hospital admissions is also on the rise.[27] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [28] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[29] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[30] On January 18, 2023 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from January 31, 2023 to April 30, 2023.[31]

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90820 (December 30, 2020), 86 FR 647 (January 6, 2021) (SR–NYSEArca–2020–116).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91633 (April 22, 2021), 86 FR 22474 (April 28, 2021) (SR–NYSEArca–2021–27).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92909 (September 9, 2021), 86 FR 51415 (September 15, 2021) (SR–NYSEArca–2021–76).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] *See* Securities Exchange Act Release No. 93918 (January 6, 2022), 87 FR 1810 (January 12, 2022) (SR–NYSEArca–2021–107).

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004).

[20] *See* Securities Exchange Act Release No. 94663 (April 11, 2022), 87 FR 22587 (April 15, 2022) (SR–NYSEARCA–2022–18).

[21] *See* Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018).

[22] *See* Securities Exchange Act Release No. 95475 (August 11, 2022), 87 FR 50673 (August 17, 2022) (SR–NYSEArca–2022–44).

[23] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029).

[24] *See* Securities Exchange Act Release No. 96259 (November 8, 2022), 87 FR 68536 (November 15, 2022) (SR–NYSEArca–2022–73).

[25] *See* Securities Exchange Act Release No. 96746 (January 25, 2023) (''SR–FINRA–2023–001'').

[26] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Jan. 9, 2023).

[27] *See* CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html* (last visited Jan. 9, 2023) (''The current 7-day daily average for December 28, 2022–January 3, 2023, was 6,519. This is a 16.1% increase from the prior 7-day average (5,613) from December 21–27, 2022.'').

[28] These new Omicron variants include BQ.1.1, XBB.1.5 and BQ.1. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.govicovid-data-trackerNvariant-proportions* (last visited Jan. 9, 2023).

[29] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop* (last visited Jan. 9, 2023).

[30] *See* SR–FINRA–2023–001.

[31] *See generally* SR–FINRA–2023–001. As a further basis for extending the temporary rule relief until April 30, 2023, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent, with some modifications, the temporary rules to allow hearings to be conducted by video conference originally set forth in SR–FINRA–2020–027 and SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2022. See id.*, at n 14. FINRA indicated that the extension of the temporary rule amendments until April 30, 2023 would help avoid FINRA's rules reverting to their original form and allow FINRA time to file for (and the Commission time to approve) the permanent rules. *See id.*

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from January 31, 2023 to April 30, 2023.

As set forth in SR–FINRA–2023–001, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[32] The daily average number of hospital admissions is also on the rise.[33] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking[34] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[35] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[36] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from January 31, 2023 to April 30, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from January 31, 2023 to April 30, 2023. The Exchange agrees with FINRA that, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2023–001, there is a continued need for this temporary relief beyond January 31, 2023. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2023–001, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2023–001, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[37] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[38] in general, and furthers the objectives of Section 6(b)(5),[39] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[40]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2023–001, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEArca–2020–85, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[41] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSEArca–2020–85, provides only temporary relief. As proposed, the changes would be in place through April 30, 2023. As noted in SR–NYSEArca–2020–85 and above, the amended rules will revert back to their original state at the conclusion of the

[32] *See supra* note 26 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[33] *See supra* note 27 (CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States).

[34] *See supra* note 28 (regarding the new Omicron variants described in CDC, COVID Data Tracker—Variant Proportions).

[35] *See supra* note 29 (regarding state-by-state comparison of COVID–19 vaccination rates).

[36] *See* SR–FINRA–2023–001.

[37] *See* SR–FINRA–2023–001.

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(7) and 78f(d).

[41] 15 U.S.C. 78f(b)(7) and 78f(d).

temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on January 31, 2023.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[42] and Rule 19b–4(f)(6) thereunder.[43] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[44] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[45] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond January 31, 2023.[46] The Exchange also states that extending the temporary relief provided in SR–NYSEArca–2020–85 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[47] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSEArca–2020–85.[48] As proposed, the temporary changes would be in place through April 30, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[49] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[50]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[51] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2023–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2023–10 and

[42] 15 U.S.C. 78s(b)(3)(A)(iii).

[43] 17 CFR 240.19b–4(f)(6).

[44] 17 CFR 240.19b–4(f)(6).

[45] 17 CFR 240.19b–4(f)(6)(iii).

[46] *See supra* Item II; *see also* SR–FINRA–2023–001.

[47] *See* SR–FINRA–2023–001 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2023–001 would become operative immediately upon filing).

[48] *See supra* note 4.

[49] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[50] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78s(b)(2)(B).

should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03168 Filed 2–14–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96867; File No. SR–MIAX–2023–04]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts

February 9, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2023, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. MIAX has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(6)[4] thereunder, which renders the proposed rule change effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 1308, Supervision of Accounts, to extend the temporary remote inspection relief for Members[5] through the earlier of the effective date of the FINRA pilot program on remote inspections (the ''FINRA Pilot Program''),[6] if approved, or December 31, 2023. The proposed extension would alleviate the ongoing operational challenges resulting from the COVID–19 pandemic that many member firms may continue to face in planning for and timely conducting required on-site inspections at locations requiring inspection in calendar year 2023.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 1308, Supervision of Accounts, to extend the temporary remote inspection relief for Members through the earlier of the effective date of the FINRA Pilot Program[7] if approved, or December 31, 2023.

The COVID–19 pandemic has caused a host of operational disruptions to the securities industry and impacted Members, regulators, investors, and other stakeholders. In response to the pandemic, the Exchange began providing temporary relief to Members from specified Exchange Rules and requirements, including Exchange Rule 1308(d), Annual Branch Office Inspections. While there are several signs that the pandemic has receded, much uncertainty still remains. The emergence of new variants, dissimilar vaccination rates through the U.S., and varying levels of transmissions of the virus all indicate that COVID–19 remains an active and real public health concern. Against this setting, the Exchange understands the complexity Members face in assessing when and how to effectively and safely recall their employees back into offices alongside fashioning permanent telework arrangements or a hybrid workforce model in which some employees may work on-site in a commercial office space and other employees may work off-site in an alternative location (*e.g.,* a personal residence).[8] Accordingly, due to the continued logistical challenge of going on-site to branch offices or locations while these public health and safety concerns related to COVID–19 persist coupled with several Members delaying their return-to-office plans, the Exchange believes that extending the temporary remote inspection relief to Members is warranted.

FINRA has filed with the Commission File No. SR–FINRA–2022–021, a proposed rule change to adopt a voluntary, remote inspections pilot program that is currently pending Commission review. The FINRA Pilot Program would provide for a voluntary, three-year remote inspection pilot program to allow broker-dealers to elect to fulfill their obligation under FINRA Rule 3110(c), Internal Inspections, by conducting inspections of some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms. FINRA has stated that the review period for its rule filing may extend well into 2023. Given the potential length of that review period, and the pilot program's significant planning requirements and varying limitations applicable to specific firms and office locations, FINRA believes that firms that intend to participate in the pilot program, if approved, would need a significant number of months to prepare appropriately for the pilot program. Moreover, further FINRA guidance might be needed to guide implementation in various circumstances.

To provide regulatory certainty while the pilot program filing is pending, and to avoid overlapping provisions if it is approved, the Exchange is proposing to amend Rule 1308(d)(5) so that the temporary relief would expire on the earlier of the effective date of the FINRA Pilot Program, if approved, or December 31, 2023. In the event the FINRA Pilot Program is not approved by December

[52] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 95452 (Aug. 9, 2022), 87 FR 50144 (Aug. 15, 2022) (SR–FINRA–2022–021).

[7] *Id.*

[8] For example, the Exchange understands that both the Commission and FINRA do not currently require employees to return to the office. See SEC Fiscal Year 2022 Agency Financial Report, available at *https://www.sec.gov/files/sec-2022-agency-financial-report.pdf* and *https://www.finra.org/rules-guidance/key-topics/covid-19.*

31, 2023, the proposed rule change will automatically sunset on December 31, 2023. The Exchange will submit a separate rule filing if it seeks to extend the duration of the temporary proposed rule beyond December 31, 2023. In the event the FINRA Pilot Program is approved prior to December 31, 2023, the Exchange will file a conforming rule change with the Commission.

The proposed rule change will conform the Exchange's Rules with those of FINRA, which has extended the same temporary remote inspection relief to all FINRA member firms.[9] This proposed extension would provide further clarity to Members on regulatory requirements and account for time needed for many Members to carefully assess when and how to have their employees safely return to their offices considering vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

The proposed amendment would provide that Members have the option to conduct remotely those inspections described in Exchange Rule 1308(d)(5) through the earlier of the effective date of the FINRA Pilot program, if approved, or December 31, 2023. The Exchange is not proposing to amend the other conditions of the temporary relief in Exchange Rule 1308(d). The current conditions of Rule 1308(d) for Members that elect to conduct remote inspections would remain unchanged: such firms must still amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time would also allow the Exchange to further monitor the effectiveness of remote inspections and their impacts—positive or negative—on Members' overall supervisory systems in the evolving workplace.

The Exchange continues to believe this temporary remote inspection option is a reasonable alternative to provide to Members to fulfill their Rule 1308 obligations during the ongoing pandemic, and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Members should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, Members with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

The Exchange notes that the proposed rule change is substantively identical to the proposed rule changes recently filed by FINRA [10] and the Investors Exchange LLC (''IEX'').[11] The Exchange notes that MIAX Chapter XIII is incorporated by reference into the rulebooks of the Exchange's affiliates, MIAX PEARL, LLC (''Pearl'') and MIAX Emerald, LLC (''Emerald''). As such, the amendments to MIAX Chapter XIII proposed herein will also apply to MIAX Pearl and MIAX Emerald Chapters XIII.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's rule proposal is intended to harmonize the Exchange's supervision rules, specifically with respect to the requirements for inspections of Members' branch offices and other locations, with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange. The proposed rule change would also avoid a potential lapse in the temporary relief while challenges from COVID–19 persist, provide firms regulatory continuity in meeting their inspection obligations during the remaining Commission review period of the Pilot Proposal, and allow firms time to adapt to the pilot program, if approved, and prepare for conducting on-site inspections, as applicable.

In recognition of the impact of COVID–19 on performing on-site inspections, the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely for calendar year 2023 inspections (or until the effective date of the FINRA pilot program). This proposed supplementary material does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID–19 pandemic, the Exchange believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue but to align the Exchange's rules with those of FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with the Exchange. The proposed rule change

[9] *See* Securities Exchange Act Release No. 94018 (Jan. 20, 2022), 87 FR 4072 (Jan. 26, 2022) (SR–FINRA–2022–01); *and* Securities Exchange Act Release No. 96241 (Nov. 4, 2022), 87 FR 67969 (Nov. 10, 2022) (SR–FINRA–2022–030).

[10] *See supra* note 9.

[11] *See* Securities Exchange Act Release No. 96606 (Jan. 6, 2023), 88 FR 2140 (Jan. 12, 2023) (SR–IEX–2022–14).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

will also provide for consistent application of the Exchange's supervision rules with those of FINRA, on which they are based. Consequently, the Exchange does not believe that the proposed change implicates competition at all. Additionally, and as stated above, FINRA has recently submitted a filing to extend its substantively identical temporary remote relief rule for its trading permit holders and members in the same manner.[15]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[16] of the Act and Rule 19b–4(f)(6)[17] thereunder. Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)[19] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. MIAX has asked the Commission to waive the 30-day operative delay to permit the Exchange to harmonize its rules with FINRA, as described herein, upon effectiveness of the proposed rule filing.

MIAX has indicated that extending the relief provided in SR–MIAX–2022–09 would provide assurances to its member firms that they can plan their 2023 inspection program and conduct remote inspections for any inspections to be conducted through the earlier of the effective date of the FINRA Pilot Program, if approved, or December 31, 2023. Importantly, extending the relief immediately upon filing and without a 30-day operative delay would allow MIAX's member firms to continue performing their supervisory obligations, while addressing the ongoing impacts of the COVID–19 pandemic. Moreover, like SR–MIAX–2022–09, the proposed extension would provide only temporary relief during the period in which MIAX's member firms' operations remain impacted by COVID–19. Thus, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposed rule change is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[23] to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

Use the Commission's internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or

- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–2023–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2023–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–MIAX–2023–04 and should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03165 Filed 2–14–23; 8:45 am]

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[15] *See supra* note 9.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96872; File No. SR–NYSECHX–2023–07]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

February 9, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 31, 2023, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSECHX–2022–19 from January 31, 2023 to April 30, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in NYSECHX–2022–19 [4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from January 31, 2023 to April 30, 2023 to harmonize with recent changes by FINRA to extend the expiration of temporary amendments to its Rules 9261 and 9830. NYSECHX–2022–19 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2022, NYSE Chicago adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE Arca, Inc., which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Chicago adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[7]

In 2020, in view of the ongoing spread of COVID–19 and its effect on FINRA's adjudicatory functions nationwide, FINRA filed a temporary rule change to grant FINRA's Office of Hearing Officers (''OHO'') and the National Adjudicatory Council (''NAC'') the authority to conduct certain hearings by video conference, if warranted by the current COVID–19-related public health risks posed by in-person hearings. Among the rules FINRA amended were Rules 9261 and 9830.[8]

FINRA represented in its filing that its protocol for conducting hearings by video conference would ensure that such hearings maintain fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training and technical support to all hearing participants.[9] According to FINRA, the proposed changes were a reasonable interim solution to allow FINRA's critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants as FINRA works towards resuming in-person hearings in a manner that is compliant with the current guidance of public health authorities.[10]

Since the Initial FINRA Filing (in 2020), FINRA periodically extended the temporary relief as the COVID–19 pandemic and concerns surrounding its spread persisted, with the most recent extension until January 31, 2023.[11] In August 2022, the Exchange first filed to temporarily grant the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings

[4] *See* Securities Exchange Act Release No. 95477 (August 11, 2022), 85 FR 50680 (August 17, 2022) (SR–NYSECHX–2022–19) (''SR–NYSECHX–2022–19'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed temporary amendments if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023. The amended NYSE Chicago rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 95020 (June 1, 2022), 87 FR 35034, (June 8, 2022) (SR–NYSECHX–2022–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliates) (''2022 Notice of Disciplinary Rules'').

[7] *See id.*

[8] *See* Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''Initial FINRA Filing''). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA's Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. *See id.* at 55714. The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department's recommendation to deny a firm or sponsoring firm's application to the NAC. *See id.* Under the Exchange's version of Rule 10.9524, if the CRO rejects the application, the ETP Holder or applicant may request a review by the Exchange Board of Directors. This differs from FINRA's process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

[9] *See* Initial FINRA Filing, 85 FR at 55713.

[10] *See id.*

[11] *See, e.g.,* Securities Exchange Act Release Nos. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–018); 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029).

during the ongoing COVID–19 pandemic, which relief it has likewise extended.[12] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[13]

According to FINRA, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[14] For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[15] The daily average number of hospital admissions is also on the rise.[16] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [17] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[18] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[19] On January 18, 2023, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from January 31, 2023 to April 30, 2023.[20]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Chicago Rules 10.9261 and 10.9830 as set forth in SR–NYSECHX–2022–19 from January 31, 2023 to April 30, 2023.

As set forth in SR–FINRA–2023–001, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[21] The daily average number of hospital admissions is also on the rise.[22] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [23] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[24] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[25] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from January 31, 2023 to April 30, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Chicago Rules 10.9261 and 10.9830 as set forth in SR–NYSECHX–2022–19 from January 31, 2023 to April 30, 2023. The Exchange agrees with FINRA that due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern. The Exchange also agrees that due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2023–001, there is a continued need for this temporary relief beyond January 31, 2023. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2023–001, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2023–001, in the Initial FINRA Filing, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[26] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5),[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove

[12] *See supra* note 4, SR–NYSECHX–2022–19; *see also* Securities Exchange Act Release No. 96260 (November 8, 2022), 87 FR 68529 (November 15, 2022) (SR–NYSECHX–2022–24).

[13] *See* Securities Exchange Act Release No. 96746 (January 25, 2023) (''SR–FINRA–2023–001'').

[14] *See id.*

[15] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Jan. 9, 2023).

[16] *See* CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html* (last visited Jan. 9, 2023) (''The current 7-day daily average for December 28, 2022–January 3, 2023, was 6,519. This is a 16.1% increase from the prior 7-day average (5,613) from December 21–27, 2022.'').

[17] These new Omicron variants include BQ.1.1, XBB.1.5 and BQ.1. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.govicovid-data-trackerNvariant-proportions* (last visited Jan. 9, 2023).

[18] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop* (last visited Jan. 9, 2023).

[19] *See* SR–FINRA–2023–001.

[20] *See generally* SR–FINRA–2023–001. As a further basis for extending the temporary rule relief until April 30, 2023, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent, with some modifications, the temporary rules to allow hearings to be conducted by video conference originally set forth in the Initial FINRA Filing and SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2022. See id.*, at n 14. FINRA indicated that the extension of the temporary rule amendments until April 30, 2023 would help avoid FINRA's rules reverting to their original form and allow FINRA time to file for (and the Commission time to approve) the permanent rules. *See id.*

[21] *See supra* note 15 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[22] *See supra* note 16 (CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States).

[23] *See supra* note 17 (regarding the new Omicron variants described in CDC, COVID Data Tracker—Variant Proportions).

[24] *See supra* note 18 (regarding state-by-state comparison of COVID–19 vaccination rates).

[25] *See* SR–FINRA–2023–001.

[26] *See* SR–FINRA–2023–001.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[29]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2023–001, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in NYSECHX–2022–19, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[30] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like NYSECHX–2022–19, provides only temporary relief. As proposed, the changes would be in place through April 30, 2023. As noted in NYSECHX–2022–19 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on January 31, 2023.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[31] and Rule 19b–4(f)(6) thereunder.[32] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[33] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[34] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond January 31, 2023.[35] The Exchange also states that extending the temporary relief provided in SR–NYSECHX–2022–19 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[36] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSECHX–2022–19.[37] As proposed, the temporary changes would be in place through April 30, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[38] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day

[29] 15 U.S.C. 78f(b)(7) and 78f(d).

[30] 15 U.S.C. 78f(b)(7) and 78f(d).

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] *See supra* Item II; *see also* SR–FINRA–2023–001.

[36] *See* SR–FINRA–2023–001 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2023–001 would become operative immediately upon filing).

[37] *See supra* note 4.

[38] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

operative delay and designates the proposal operative upon filing.[39]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[40] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2023–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2023–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2023–07 and should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03169 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

[39] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78s(b)(2)(B).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96865; File No. SR–IEX–2023–01]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule 11.190(e) To Offer Users an Additional Option for How To Apply the Exchange's Existing Anti-Internalization Functionality to Their Orders

February 9, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 2, 2023, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend IEX Rule 11.190(e) to offer Users an additional option for how to apply the Exchange's existing anti-internalization functionality to their orders and to make conforming and clarifying changes to the rule. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IEX Rule 11.190(e) to offer Users[8] an additional option for how to apply the Exchange's existing anti-internalization group identifier (''AIQ'') functionality to their orders. Specifically, the Exchange proposes to amend IEX Rule 11.190(e)(2)(E) to allow Users to modify the way a newer order designated with the ''Decrement Larger—Original Order Quantity''[9] AIQ functionality interacts with older orders also subject to anti-internalization. The Exchange also proposes to make conforming and clarifying changes to IEX Rule 11.190(e)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] Pursuant to IEX Rule 1.160(qq), a User means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to IEX Rule 11.130. Member is defined in IEX Rule 1.160(s), and Sponsored Participant is defined in IEX Rule 1.160(ll).

[9] *See* IEX Rule 11.190(e)(2)(E).

IEX offers optional anti-internalization functionality that enables a User to prevent two of its orders from executing against each other. To utilize IEX's optional anti-internalization functionality, a User adds a unique identifier of its choosing to an order, thereby designating the order as subject to anti-internalization (the ''AIQ identifier'').[10] Orders that have the same AIQ identifier and originate from the same MPID, User, or Member Affiliate,[11] as specified by the User,[12] are part of the same ''AIQ group.'' [13] And any active order that is part of the same AIQ group is prevented from executing against a resting opposite side order that is part of the same AIQ group.

Users seeking to apply AIQ to their orders also include one of five modifiers to their orders, which determines the interaction between two orders within the same AIQ group that would otherwise execute against each other (''AIQ modifier'').[14] The AIQ modifier on the order with the newer timestamp controls the interaction between the two orders in an AIQ group.[15] The five AIQ modifiers are: (1) cancel the older of the two orders (''CO''); (2) cancel the newer of the two orders (''CN''); (3) cancel both orders (''CB''); (4) cancel the smaller of the two orders (''CS''); or cancel the smaller of the two orders and decrement the size of the smaller order from the larger order (''DLO'').

In particular, IEX Rule 11.190(e)(2)(E) provides for the following functionality if the newer order is marked with the DLO AIQ modifier:

1. If both the newer and older orders are the same size, both orders are cancelled back to the User by the System [16]; or

2. If the newer order is larger than the older order, the size of the newer order is decremented by the size of the older order and the older order is cancelled back to the User by the System; or

3. If the newer order is smaller than the older order and the older order is also marked with the DLO AIQ modifier, the size of the older order is decremented by the size of the newer order and the newer order is cancelled back to the User by the System; or

4. If the newer order is smaller than the older order and the older order is marked with an AIQ modifier other than the DLO AIQ modifier, both orders are cancelled back to the User by the System.

[10] *See* IEX Rule 11.190(e)(1)(A).

[11] *See* IEX Rule 11.190(e)(1)(B)(i).

[12] Users may elect to enable anti-internalization functionality on an IEX Port Request Form, designating whether such functionality should be applied on an MPID, User, or Member Affiliate basis.

[13] *See* IEX Rule 11.190(e)(1)(B).

[14] *See* IEX Rule 11.190(e)(1)(C).

[15] *See* IEX Rule 11.190(e).

[16] *See* IEX Rule 1.160(nn).

Proposal

Based upon informal feedback from Members, IEX is proposing to allow Users to override the default functionality of the DLO AIQ modifier that IEX applies when the newer order is smaller than the older order and the older order is not designated with the DLO AIQ modifier, which is described in the fourth list item, above. IEX is not proposing to modify any of the DLO AIQ functionality described in the first through third of the above list.

As proposed, if the newer order is smaller than the older order, the older order is marked with an AIQ modifier other than the DLO AIQ modifier, the older order is not routable,[17] and the User instructed the Exchange to disregard the older order's AIQ modifier; then the System would decrement the size of the larger older order by the size of the smaller newer order (without changing the older order's AIQ modifier) and cancel the smaller newer order instead of canceling both orders.

Thus, IEX proposes to modify IEX Rule 11.190(e)(2)(E) to specify the interactions between two orders in the same AIQ group when the newer order is marked with the DLO AIQ modifier. Specifically, IEX proposes to delete the first, third and fourth sentences of IEX Rule 11.190(e)(2)(E), and amend the rule to read as follows:

Decrement Larger—Original Order Quantity (''DLO''). If the newer order is marked with the DLO AIQ modifier, the following describes the manner in which such orders will interact:

(i) If both orders are equivalent in size, then both orders will be cancelled back to the originating User.

(ii) If the newer order is larger than the older order, then the size of the larger order will be decremented by the size of the smaller order, and the smaller order will be cancelled back to the originating User.

(iii) If the newer order is smaller than the older order, and:

a. the older order is also marked with the DLO AIQ modifier, then the size of the older order will be decremented by the size of the newer order, and the newer order will be canceled back to the originating User.

b. the older order is marked or designated with any AIQ modifier other than DLO, and the User did not provide a standing instruction for the Exchange to disregard the AIQ modifier of the older order if the newer order is marked with the DLO AIQ modifier, then both orders will be canceled back to the originating User.

c. the older order is marked or designated with any AIQ modifier other than DLO, the User provided a standing instruction for the Exchange to disregard the AIQ modifier of the older order if the newer order is marked with the DLO AIQ modifier, and:

i. the older order is not routable, then the size of the older order will be decremented by the size of the newer order, and the newer order will be cancelled back to the originating User.

ii. the older order is routable, then both orders will be cancelled back to the originating User.[18]

With the exception of proposed IEX Rule 11.190(e)(2)(E)(iii), which specifies how a User may override the default DLO AIQ functionality (unless the older order is routable), the proposed changes set forth above to the text of IEX Rule 11.190(e)(2)(E) simply clarify the existing functionality of the DLO AIQ modifier.

Additionally, IEX proposes to make conforming and clarifying changes to IEX Rule 11.190(e)(2)(A)–(D). Specifically, IEX proposes to remove the first sentence of each of these subparagraphs, because they restate language found in IEX Rule 11.190(e) about how an active order subject to AIQ will not execute against resting opposite side orders within the same AIQ group. IEX also proposes to add clarifying language to subparagraphs (A)–(D) of IEX Rule 11.190(e)(2) clarifying that the interaction between two orders in the same AIQ group is determined by the newer order's AIQ modifier. Finally, IEX proposes to add language clarifying that if the criteria in that subparagraph are met, then the two orders will interact in the specified manner.

The proposed rule change is designed to provide additional flexibility to Users in how they implement self-trade prevention provided by the Exchange, and thereby better manage their order flow and prevent undesirable executions or the potential for ''wash sales'' that may occur as a result of the speed of trading in today's marketplace. Based on informal discussions with Users, the Exchange believes that the proposed additional anti-internalization functionality will be useful to Users in implementing their own compliance controls. And the additional AIQ functionality may assist Members in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as

[17] IEX rejects routable orders designated with a DLO AIQ modifier, *see* IEX Rule 11.190(e)(8), due to technical limitations that prevent the IEX router from identifying that the size of a routable order has been decremented pursuant to IEX Rule 11.190(e). For the same reason, IEX is proposing to not allow decrementing of an older routable order even if the User has instructed the Exchange to disregard the older order's AIQ modifier.

[18] *See* proposed IEX Rule 11.190(e)(2)(E).

principal with orders generated for those accounts.

The Exchange notes that, as with the current anti-internalization functionality offered by IEX, use of the proposed new DLO AIQ functionality will not relieve, or otherwise modify the duty of best execution owed to orders received from customers.[19] As such, market participants using the AIQ modifiers will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-internalization.[20] Further, as with current rule provisions, Market Makers [21] and other Users may not use AIQ functionality to evade the firm quote obligation, as specified in IEX Rule 11.151(b), and the AIQ functionality must be used in a manner consistent with just and equitable principles of trade.[22] For these reasons, the Exchange believes the proposed new optional DLO AIQ functionality offers Users enhanced order processing functionality that may prevent potentially undesirable executions without modifying broker-dealer best execution obligations.

IEX notes that this proposed rule change is functionally identical to one of the anti-internalization options offered by the Cboe BZX Exchange, Inc (''BZX''), with the exception that the BZX rule allows a User to decrement an older order that is routable.[23]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5),[25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because allowing Users to apply DLO AIQ functionality to their orders irrespective of if the newer order is larger than the older order or if the older order has the same AIQ functionality (which is not a requirement for any other AIQ modifier), will provide Users with additional flexibility with respect to how they implement self-trade protections provided by IEX that may better support their trading strategies and compliance controls. Users that prefer the current DLO AIQ functionality can continue to use it without any modification (*i.e.,* this change will only apply if the User specifically instructs the Exchange to override the current DLO AIQ functionality).

Additionally, IEX believes that, as discussed in the Purpose section, allowing Users the option of having an order designated with a DLO AIQ modifier decrement the larger of the two orders with which it would otherwise execute may encourage Users to use the Exchange's optional AIQ functionality. As noted in the Purpose section, IEX believes that providing Users with more flexibility and control over the interactions of their orders better prevents undesirable executions or the potential for ''wash sales'' that may occur as a result of the speed of trading in today's marketplace. And the ability to override the default DLO AIQ modifier functionality may better assist Members in complying with certain ERISA rules and regulations that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

And the Exchange believes that the proposed non-substantive conforming and clarifying changes to IEX Rule 11.190(e)(2) are consistent with the protection of investors and the public interest because they will have no impact on the Exchanges anti-internalization functionality, but rather simply provide consistency and clarity in IEX's description of the AIQ modifiers, thereby reducing the potential for confusion of any market participants.

Finally, as discussed in the Purpose section, the Exchange notes that this proposed rule change is functionally identical to the functionality at BZX with the exception of IEX not allowing a routable order to be decremented.[26] Consequently, the Exchange does not believe that the proposed rule change raises any new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance IEX's competitiveness by providing additional flexibility to Users applying the Exchange's optional anti-internalization functionality, thereby incentivizing Users to send orders to IEX and increase the liquidity available on the Exchange. Additionally, the proposed rule change is designed to assist Users with compliance with the securities laws that prohibit wash trading as well as ERISA requirements. The Exchange also notes that the proposed new DLO AIQ modifier functionality, like the Exchange's current anti-internalization functionality, is completely optional and Users can determine on an order-by-order basis whether to apply anti-internalization protections to orders submitted to the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, IEX notes that there is no barrier to other national securities exchanges adopting a similar modification to their equivalent AIQ modifiers.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As proposed, all Users will continue to be eligible to use the Exchange's anti-internalization functionality.

Further, the proposed conforming and clarifying changes to IEX Rule 11.190(e)(2) are not designed to address any competitive issue, but rather to provide additional clarity in IEX's rulebook.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under

[19] *See* Supplementary Material .01 to IEX Rule 11.190(e).

[20] *Id.*

[21] *See* IEX Rule 14.002(a)(20).

[22] *See* Supplementary Material .02 and .03 to IEX Rule 11.190(e).

[23] *See* BZX Rule 11.9(f)(3).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *See supra* note 23.

Section 19(b)(3)(A) [27] of the Act and Rule 19b–4(f)(6) [28] thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b–4 [29] because it merely provides additional flexibility for the use of AIQ functionality which, as discussed above, is substantially identical to an existing rule of another exchange with the exception of BZX allowing the decrementing of a routable order.[30] Thus, IEX does not believe that the proposed change raises any new or novel material issues that have not already been considered by the Commission in connection with existing anti-internalization functionality offered by IEX and other national securities exchanges.

Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act [31] and paragraph (f)(6) of Rule 19b–4 thereunder.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [33] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2023–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2023–01. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2023–01 and should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03164 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(3)(A).
[28] 17 CFR 240.19b–4(f)(6).
[29] 17 CFR 240.19b–4(f)(6).
[30] *See supra* note 23.
[31] 15 U.S.C. 78s(b)(3)(A).
[32] 17 CFR 240.19b–4.
[33] 15 U.S.C. 78s(b)(2)(B).
[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–408, OMB Control No. 3235–0464]

Proposed Collection; Comment Request; Extension: Rule 101

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 101 of Regulation M (17 CFR 242.101), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 101—Activities by Distribution Participants—prohibits distribution participants from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by this rule may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of policies regarding information barriers between their affiliates, and the maintenance of a written policy regarding general compliance with Regulation M for de minimus transactions.

There are approximately 2,002 respondents per year that require an aggregate total of approximately 27,901 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes on average approximately 13.936563 hours to complete. Thus, the total hour burden per year is approximately 27,901 hours. The total estimated internal compliance cost for the respondents is approximately $2,259,981, resulting in an estimated internal cost of compliance for each respondent per response of approximately $1,128.86 (*i.e.,* $2,259,981/2,002 responses).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity

of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by April 17, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 10, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03233 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–382, OMB Control No. 3235–0762]

Proposed Collection; Comment Request; Extension: Customer Account Statements

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 607 (17 CFR 2240.15) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 607 requires disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

The information collected pursuant to Rule 607 is necessary to facilitate the establishment of a national market system for securities. The purpose of the rule is to ensure that customers are adequately apprised of the broker-dealer's order routing practices with respect to the customer's order, in furtherance of the Commission's statutory mandate to protect investors.

The Commission estimates that approximately 3,643 respondents will make the third-party disclosures required in the collection of information requirements to 183,511,801 customer accounts each year. The Commission estimates that the average number of hours necessary for each respondent to comply with Rule 607 per year is 39.714 hours, which results in an average aggregated annual burden of 144,678.102 hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by April 17, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: February 9, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03154 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–797, OMB Control No. 3235–0748]

Proposed Collection; Comment Request: Extension; ''Ombudsman Matter Management System Submission Form''

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of the Investor Advocate, Washington, DC 20549–3720

Notice is hereby given pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) that the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Each year the Commission's Office of the Investor Advocate, Office of the Ombudsman (''Ombudsman'') receives over a thousand contacts from investors who have complaints or questions about the SEC or any of the self-regulatory organizations that it oversees. To make it easier for the public to contact the Ombudsman, the Ombudsman (''Ombudsman'') created an electronic form (Ombudsman Matter Management System Submission Form) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also provide the investor with automated information about their issue. The Ombudsman Matter Management System (OMMS) Submission Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken. Use of the Ombudsman Matter Management System Submission Form is voluntary. Absent the forms, the public still has several ways to contact the Ombudsman, including telephone, letters, and email. Investors can access the Ombudsman Matter Management System Submission Form through the Ombudsman web page at the web address *https://www.sec.gov/ombudsman* or directly at the web address *https://omms.sec.gov.*

The dual purpose of the Ombudsman Matter Management System Submission Form is to make it easier for the public to contact the agency with complaints,

questions, tips, or other feedback and to streamline the workflow of Ombudsman staff that record, process, and respond to investor contacts. Investors who submit complaints, ask questions, or provide tips do so voluntarily. Although the Ombudsman Matter Management System Submission Form provides a structured format for incoming investor correspondence, the Commission does not require that investors use any particular form or format when contacting the Ombudsman. Investors who choose not to use the Ombudsman Matter Management System Submission Form will receive the same level of service as those who do.

The Ombudsman receives approximately 1,500 contacts each year through the Ombudsman Matter Management System Submission Form. The Ombudsman uses the information that investors supply on the Ombudsman Matter Management System Submission Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, referring matters to enforcement or examinations for potential investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends.

The staff of the Commission estimates that the total reporting burden for using the Ombudsman Matter Management System Submission Form is 750 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 1,500 respondents × 30 minutes = 750 burden hours. Members of the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* General comments regarding the above information submitted within 60 days of this publication will be considered by April 17, 2023 and should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo, 100 F St NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 10, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03230 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96868; File No. SR–NYSENAT–2023–06]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

February 9, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 31, 2023, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from January 31, 2023 to April 30, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE National Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSENAT–2020–31 [4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from January 31, 2023 to April 30, 2023 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSENAT–2020–31 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6]

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90137 (October 8, 2020), 85 FR 65087 (October 14, 2020) (SR–NYSENAT–2020–31) (''SR–NYSENAT–2020–31'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond April 30, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSENAT–2020–31. The amended NYSE National rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR–NYSENAT–2018–02) (''2018 Approval Order'').

Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[7]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[8]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 29, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[9] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[10] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.[11] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[12] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021.[13] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[14] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to December 31, 2021.[15] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from December 31, 2021, to March 31, 2022.[16] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[17] On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[18] On March 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.[19] On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.[20] On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to October 31, 2022.[21] On October 17, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.[22] On October 28, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to January 31, 2023, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[23]

According to FINRA, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[24] For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[25] The daily average number of hospital admissions is also on the rise.[26] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [27] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[28] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[29] On January 18, 2023, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from January 31, 2023 to April 30, 2023.[30]

[7] *See id.*

[8] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[9] *See* note 4, *supra.*

[10] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[11] *See* Securities Exchange Act Release No. 90822 (December 30, 2020), 86 FR 627 (January 6, 2021) (SR–NYSENAT–2020–39).

[12] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[13] *See* Securities Exchange Act Release No. 91634 (April 22, 2021), 86 FR 22477 (April 28, 2021) (SR–NYSENAT–2021–11).

[14] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[15] *See* Securities Exchange Act Release No. 92908 (September 9, 2021), 86 FR 51424 (September 15, 2021) (SR–NYSENAT–2021–16).

[16] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[17] *See* Securities Exchange Act Release No. 93919 (January 6, 2022), 87 FR 1804 (January 12, 2022) (SR–NYSENAT–2021–25).

[18] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004).

[19] *See* Securities Exchange Act Release No. 94662 (April 11, 2022), 87 FR 22601 (April 15, 2022) (SR–NYSENAT–2022–03).

[20] See Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018).

[21] *See* Securities Exchange Act Release No. 95476 (August 11, 2022), 87 FR 50668 (August 17, 2022) (SR–NYSENAT–2022–14).

[22] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029).

[23] *See* Securities Exchange Act Release No. 96262 (November 8, 2022), 87 FR 68540 (November 15, 2022) (SR–NYSENAT–2022–24).

[24] *See* Securities Exchange Act Release No. 96746 (January 25, 2023) (''SR–FINRA–2023–001'').

[25] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Oct. 11, 2022).

[26] *See* CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html* (last visited Jan. 9, 2023) (''The current 7-day daily average for December 28, 2022–January 3, 2023, was 6,519. This is a 16.1% increase from the prior 7-day average (5,613) from December 21–27, 2022.'').

[27] These new Omicron variants include BQ.1.1, XBB.1.5 and BQ.1. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.govicovid-data-trackerNvariant-proportions* (last visited Jan. 9, 2023).

[28] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop (last visited Jan. 9, 2023).*

[29] *See* SR–FINRA–2023–001.

[30] *See generally* SR–FINRA–2023–001. As a further basis for extending the temporary rule relief until April 30, 2023, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent, with some modifications, the temporary rules to allow hearings to be conducted by video conference originally set forth in SR–FINRA–2020–027 and

Continued

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from January 31, 2023 to April 30, 2023.

As set forth in SR–FINRA–2023–001, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[31] The daily average number of hospital admissions is also on the rise.[32] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [33] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[34] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[35] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from January 31, 2023 to April 30, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from January 31, 2023 to April 30, 2023. The Exchange agrees with FINRA that, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2023–001, there is a continued need for this temporary relief beyond January 31, 2023. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2023–001, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2023–001, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[36] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[37] in general, and furthers the objectives of Section 6(b)(5),[38] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[39]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2023–001, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in SR–NYSENAT–2020–31, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act [40] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSENAT–2020–31, provides only temporary relief. As proposed, the

SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2022. See id.,* at n 14. FINRA indicated that the extension of the temporary rule amendments until April 30, 2023 would help avoid FINRA's rules reverting to their original form and allow FINRA time to file for (and the Commission time to approve) the permanent rules. *See id.*

[31] *See supra* note 25 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[32] *See supra* note 26 (CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States).

[33] *See supra* note 27 (regarding the new Omicron variants described in CDC, COVID Data Tracker—Variant Proportions).

[34] *See supra* note 28 (regarding state-by-state comparison of COVID–19 vaccination rates).

[35] *See* SR–FINRA–2023–001.

[36] *See* SR–FINRA–2023–001.

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78f(b)(7) & 78f(d).

[40] 15 U.S.C. 78f(b)(7) & 78f(d).

changes would be in place through April 30, 2023. As noted in SR–NYSENAT–2020–31 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on January 31, 2023.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[41] and Rule 19b–4(f)(6) thereunder.[42] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[43] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[44] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond January 31, 2023.[45] The Exchange also states that extending the temporary relief provided in SR–NYSENAT–2020–31 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[46] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSENAT–2020–31.[47] As proposed, the temporary changes would be in place through April 30, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[48] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[49]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[50] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSENAT–2023–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2023–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

[41] 15 U.S.C. 78s(b)(3)(A)(iii).

[42] 17 CFR 240.19b–4(f)(6).

[43] 17 CFR 240.19b–4(f)(6).

[44] 17 CFR 240.19b–4(f)(6)(iii).

[45] *See supra* Item II; *see also* SR–FINRA–2023–001.

[46] *See* SR–FINRA–2023–001 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2023–001 would become operative immediately upon filing).

[47] *See supra* note 4.

[48] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[49] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78s(b)(2)(B).

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2023–06 and should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03166 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96870; File No. SR–NYSEAMER–2023–09]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

February 9, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 30, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from January 31, 2023 to April 30, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE American Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSEAMER–2020–69[4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from January 31, 2023 to April 30, 2023, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEAMER–2020–69 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate the New York Stock Exchange LLC (''NYSE''), and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE American disciplinary rules were implemented on April 15, 2016.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 and Rule 9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31,

[51] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90085 (October 2, 2020), 85 FR 63603 (October 8, 2020) (SR–NYSEAMER–2020–69) (''SR–NYSEAMER–2020–69'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond April 30, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEAMER–2020–69. The amended NYSE American rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30) (''2016 Notice'').

[7] *See* NYSE MKT Information Memorandum 16–02 (March 14, 2016).

[8] *See* 2016 Notice, 81 FR at 11327 & 11332.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90823 (December 30, 2020), 86 FR 650 (January 6, 2021) (SR–NYSEAMER–2020–88).

2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18] On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[19] On March 30, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.[20] On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.[21] On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to October 31, 2022.[22] On October 17, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.[23] On October 28, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to January 31, 2023, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[24]

According to FINRA, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[25] For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[26] The daily average number of hospital admissions is also on the rise.[27] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [28] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[29] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[30] On January 18, 2023, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from January 31, 2023 to April 30, 2023.[31]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from January 31, 2023 to April 30, 2023.

As set forth in SR–FINRA–2023–001, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[32] The daily average number of hospital admissions is also on the rise.[33] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [34] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[35] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[36] FINRA accordingly proposed to extend the expiration date of the

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91631 (April 22, 2021), 86 FR 22471 (April 28, 2021) (SR–NYSEAMER–2021–23).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92910 (September 9, 2021), 86 FR 51418 (September 15, 2021) (SR–NYSEAMER–2021–37).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] *See* Securities Exchange Act Release No. 93917 (January 6, 2022), 87 FR 1825 (January 12, 2022) (SR–NYSEAMER–2021–49).

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004).

[20] *See* Securities Exchange Act Release No. 94665 (April 11, 2022), 87 FR 22594 (April 15, 2022) (SR–NYSEAMER–2022–16).

[21] *See* Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018).

[22] *See* Securities Exchange Act Release No. 95474 (August 11, 2022), 87 FR 50665 (August 17, 2022) (SR–NYSEAMER–2022–34).

[23] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029).

[24] *See* Securities Exchange Act Release No. 96257 (November 8, 2022), 87 FR 68533 (November 15, 2022) (SR–NYSEAMER–2022–50).

[25] *See* Securities Exchange Act Release No. 96746 (January 25, 2023) (''SR–FINRA–2023–001'').

[26] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Jan. 9, 2023).

[27] *See* CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html* (last visited Jan. 9, 2023) (''The current 7-day daily average for December 28, 2022–January 3, 2023, was 6,519. This is a 16.1% increase from the prior 7-day average (5,613) from December 21–27, 2022.'').

[28] These new Omicron variants include BQ.1.1, XBB.1.5 and BQ.1. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.govicovid-data-trackerNvariant-proportions* (last visited Jan. 9, 2023).

[29] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop* (last visited Jan. 9, 2023).

[30] *See* SR–FINRA–2023–001.

[31] *See generally* SR–FINRA–2023–001. As a further basis for extending the temporary rule relief until April 30, 2023, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent, with some modifications, the temporary rules to allow hearings to be conducted by video conference originally set forth in SR–FINRA–2020–027 and SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2022. See id.*, at n 14. FINRA indicated that the extension of the temporary rule amendments until April 30, 2023 would help avoid FINRA's rules reverting to their original form and allow FINRA time to file for (and the Commission time to approve) the permanent rules. *See id.*

[32] *See supra* note 26 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[33] *See supra* note 27 (CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States).

[34] *See supra* note 28 (regarding the new Omicron variants described in CDC, COVID Data Tracker—Variant Proportions).

[35] *See supra* note 29 (regarding state-by-state comparison of COVID–19 vaccination rates).

[36] *See* SR–FINRA–2023–001.

temporary rule amendments from January 31, 2023 to April 30, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from January 31, 2023 to April 30, 2023. The Exchange agrees with FINRA that, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2023–001, there is a continued need for this temporary relief beyond January 31, 2023. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2023–001, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2023–001, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[37] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[38] in general, and furthers the objectives of Section 6(b)(5),[39] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[40]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2023–001, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEAMER–2020–69, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[41] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSEAMER–2020–69, provides only temporary relief. As proposed, the changes would be in place through April 30, 2023. As noted in SR–NYSEAMER–2020–69 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on January 31, 2023.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[42] and Rule 19b–4(f)(6) thereunder.[43] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii)

[37] *See* SR–FINRA–2023–001.

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(7) and 78f(d).

[41] 15 U.S.C. 78f(b)(7) & 78f(d).

[42] 15 U.S.C. 78s(b)(3)(A)(iii).

[43] 17 CFR 240.19b–4(f)(6).

impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[44] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[45] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond January 31, 2023.[46] The Exchange also states that extending the temporary relief provided in SR–NYSEAMER–2020–69 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[47] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSEAMER–2020–69.[48] As proposed, the temporary changes would be in place through April 30, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[49] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[50]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[51] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2023–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2023–09 and should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03167 Filed 2–14–23; 8:45 am]

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[44] 17 CFR 240.19b–4(f)(6).

[45] 17 CFR 240.19b–4(f)(6)(iii).

[46] *See supra* Item II; *see also* SR–FINRA–2023–001.

[47] *See* SR–FINRA–2023–001 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2023–001 would become operative immediately upon filing).

[48] *See supra* note 4.

[49] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[50] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78s(b)(2)(B).

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–410, OMB Control No. 3235–0466]

Proposed Collection; Comment Request; Extension: Rule 103

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 103 of Regulation M (17 CFR 242.103), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 103—Nasdaq Passive Market Making—permits passive market-making in Nasdaq securities during a distribution. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making.

There are approximately 428 respondents per year that require an

aggregate total of approximately 428 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 1 hour to complete. Thus, the total hour burden per year is approximately 428 hours. The total estimated internal cost of compliance for the respondents is approximately $34,668 per year, resulting in an estimated internal cost of compliance per response of approximately $81 (*i.e.,* $34,668/428 responses).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by April 17, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 10, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03232 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96856; File No. SR–CBOE–2023–011]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Select Customer Options Reduction Program

February 9, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend the Select Customer Options Reduction program. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Select Customer Options Reduction program (''SCORe''), effective February 1, 2023.

By way of background, SCORe is a discount program for Retail, Non-FLEX Customer (''C'' origin code) volume in the following options classes: SPX (including SPXW), VIX, RUT, MXEA, MXEF & XSP (''Qualifying Classes''). The SCORe program is available to any Trading Permit Holder (''TPH'') Originating Clearing Firm or non-TPH Originating Clearing Firm that sign up for the program.[3]

Currently, SCORe currently utilizes two measures for participation and discounts: (1) the Qualifying Tiers, which determine whether a firm qualifies for the discounts in either Tier A or Tier B and (2) the Discount Tiers, which determine the Originating Firm's applicable discount tiers and corresponding discounts. Under the current program, to determine an Originating Firm's Qualifying Tier, the Originating Firm's total Retail volume in the Qualifying Classes will be divided by the Originating Firm's total Customer volume, Retail and non-Retail, in the Qualifying Classes. Based on the percentage result, an Originating Firm qualifies for Tier A or Tier B discounts. To determine the Discount Tier, an Originating Firm's Retail volume in the Qualifying Classes will be divided by total Retail volume in the Qualifying Classes executed on the Exchange. The program then provides a discount per retail contract, based on the determined Qualifying Tier and Discount Tier thereunder. Currently, the program sets forth three discount tiers for Qualifying Tier A, with applicable discounts ranging from $0 to $0.08 per retail contract, and five discount tiers for Qualifying Tier B, with applicable discounts ranging from $0 to $0.25 per retail contract.

The Exchange proposes to streamline the program by eliminating the Qualifying Tiers construct. As amended, SCORe would utilize only one measure for participation and discount (*i.e.,* the Discount Tiers). All Originating Firms would be subject to the same discount tier structure, which determines the corresponding applicable discounts.

The Exchange next proposes to amend the discount tier structure for the Discount Tiers. Specifically, the Exchange proposes to consolidate the program into four discount tiers based on qualifying volume, *i.e.,* Discount Tiers 1–4, with corresponding discounts, as set forth below.

Tier	Retail volume percentage in qualifying classes	Discount per retail contract
1	0.00%–5.00%	$0.00
2	Above 5.00%–21.00%	0.04
3	Above 21.00%–31.00%	0.05
4	Above 31.00%–100.00%	0.14

The discount tier structure for the Discount Tiers will continue to be based on the same calculation, *i.e.,* to determine the Discount Tier, an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For this program, an ''Originating Clearing Firm'' is defined as either (a) the executing clearing Options Clearing Corporation (''OCC'') number on any transaction which does not also include a Clearing Member Trading Agreement (''CMTA'') OCC clearing number or (b) the CMTA in the case of any transaction which does include a CMTA OCC clearing number.

Originating Firm's Retail volume in the Qualifying Classes will be divided by total Retail volume in the Qualifying Classes executed on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

First, the Exchange believes the proposal to eliminate the utilization of Qualifying Tiers as a measure for its SCORe program is reasonable because it no longer wishes to consider this metric as part of the program's participation and discounts, and it is not required to do so. The Exchange also notes that the Qualifying Tier measure was only one part of SCORe and believes the intention of the program will continue to be achieved through utilization of the Discount Tiers measure. The Exchange believes the proposed changes to eliminate the utilization of Qualifying Tiers as a measure for its SCORe program and to consolidate the discount tier structure into four Discount Tiers are reasonable because it eliminates potential program complexity and provides for a simpler calculation in determining qualifying thresholds and applicable discounts. Further, the Exchange believes the amended discount tier structure, including qualifying thresholds for the proposed four Discount Tiers and corresponding applicable discounts, remain equitable and reasonable by adequately considering the elimination of the Qualifying Tier and not materially changing the program.

The Exchange believes SCORe, currently and as amended, continues to provide an incremental incentive for Originating Firms to strive for the highest tier level, which provides increasingly higher discounts. As such, the changes are designed to encourage increased Retail volume in the Qualifying Classes, which provides increased volume and greater trading opportunities for all market participants. The Exchange believes the proposed change is equitable and not unfairly discriminatory because the qualifying volume thresholds apply to all registered Originating Firms uniformly. Additionally, while the Exchange has no way of predicting with certainty how many and which Originating Firms will qualify for which Discount Tier, the Exchange anticipates at least two Originating Firms will qualify for Tier 2, one Originating Firm will qualify for Tier 3, and one Originating Firm will qualify for Tier 4, to receive the applicable discounts for each Tier. The Exchange does not believe the proposed discount will adversely impact any Originating Firm's pricing. Rather, should an Originating Firm not meet the proposed criteria, the Originating Firm will merely not receive the proposed discount.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes to the SCORe program will impose any burden on intramarket competition because the proposed changes apply to all registered Originating Firms uniformly, in that all Originating Firms will be subject to the same qualifying thresholds for the proposed four Discount Tiers and corresponding applicable discounts. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Qualifying Classes are products that only trade on the Exchange. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2023–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2023–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(5).
[6] *Id.*
[7] 15 U.S.C. 78f(b)(4).
[8] 15 U.S.C. 78s(b)(3)(A).
[9] 17 CFR 240.19b–4(f).

post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2023–011 and should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03161 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96861; File No. SR–CboeBZX–2022–038]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 11.28(a) To Extend the MOC Cut-Off Time for Cboe Market Close

February 9, 2023.

I. Introduction

On August 5, 2022, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BZX Rule 11.28(a) to extend the cut-off time for accepting Market-on-Close orders entered for participation in the Cboe Market Close. The proposed rule change was published for comment in the **Federal Register** on August 24, 2022.[3]

On October 4, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On November 11, 2022, the Exchange submitted Amendment No. 1 to the proposed rule change.[6] Amendment No. 1 was published for comment in the **Federal Register** and, under Section 19(b)(2)(B) of the Act,[7] the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8]

The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal, as Modified by Amendment No. 1

Cboe Market Close (''CMC'') provides the Exchange's Members[9] an optional closing match process for non-BZX-listed securities. Currently, pursuant to BZX Rule 11.28(a), Members may enter, cancel, or replace Market-on-Close (''MOC'') orders designated for participation in CMC beginning at 6:00 a.m.[10] up to 3:35 p.m. (''MOC Cut-Off Time'').[11] The Exchange states that the CMC closing match process—the matching of all buy and sell MOC orders entered into the BZX system by time priority at the MOC Cut-Off Time, the electronic notification to Members of any unmatched MOC orders, and the dissemination by the Exchange in the Cboe Auction Feed of the total size of all buy and sell orders matched via CMC—generally occurs within microseconds.[12]

The Exchange now proposes to move the MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. The Exchange states that its Members have requested an MOC Cut-Off Time that is closer to the end of its regular trading hours (4:00 p.m.) so that they may retain control of their trading for a longer period and better manage their trading at the close.[13] The Exchange also states that its Members have indicated that extending the MOC Cut-Off Time to 3:49 p.m. will help make CMC a more comparable alternative to the New York Stock Exchange (''NYSE'') and Nasdaq,[14] which have extended the MOC cut-off times for their closing auctions closer to 4:00 p.m. (to 3:50 p.m. and 3:55 p.m., respectively).[15] The Exchange further states that closing price match services offered by off-exchange venues, including alternative trading systems, have grown in popularity, and that such venues offer an MOC cut-off time as close as 30 seconds before the primary exchanges' cut-off times.[16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder.[17] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95529 (August 17, 2022), 87 FR 52092.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 95967, 87 FR 61425 (October 11, 2022).

[6] Amendment No. 1 amended and superseded the proposed rule change as originally filed. Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2022-038/srcboebzx2022038.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 96359 (November 18, 2022), 87 FR 72527 (November 25, 2022) (''Order Instituting Proceedings'').

[9] The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* BZX Rule 1.5(n), definition of ''Member.''

[10] All times referenced in this order are Eastern Time.

[11] *See* Order Instituting Proceedings, 87 FR at 72528.

[12] *See id.* at 72530 n.34. The Exchange states that, while the duration may vary, the total matching process typically takes a fraction of a second—about 948 microseconds—with the maximum being around one second. *See id.* at 72531 n.41.

[13] *See id.* at 72529. The Exchange posits that market participants may prefer to trade as close to 4:00 p.m. as possible because doing so can provide them with more time to seek better priced liquidity for their orders, as well as give them more time to determine the size of their outstanding orders that they may decide to commit to CMC, the primary exchanges' closing auctions, or services offered by off-exchange venues. *See id.* at 72529–31.

[14] *See id.* at 72529.

[15] *See id.* at 72528 and n.25.

[16] *See id.* at 72528–59 and n.27.

[17] In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,[19] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange proposes an MOC Cut-Off Time of 3:49 p.m., which would be one minute prior to NYSE's current MOC cut-off time of 3:50 p.m. and six minutes prior to Nasdaq's current MOC cut-off time of 3:55 p.m.[20] The Exchange states that it discussed the proposed 3:49 p.m. MOC Cut-Off Time with both current CMC users and potential new CMC users and confirmed that both groups could technologically manage the proposed change.[21] The Exchange states that today's market participants, including CMC users, rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically measured in microseconds.[22] The Exchange states that CMC's current users utilize third-party providers or broker-dealers that provide them with electronic trading technology, enabling them to quickly react to market conditions and messages; and further states that market participants that may not currently possess internal high-speed routing and trading technology may, and likely already do, utilize such service providers.[23] The Exchange thus believes that if a CMC user receives a message that their MOC order was not matched in CMC, such user would have more than enough time to re-route their MOC order to the primary exchange.[24] The Commission believes that the data and survey information provided by the Exchange support the Exchange's contention that a 3:49 p.m. MOC Cut-Off Time would provide CMC users with adequate time to receive electronic notification of any unmatched MOC orders and participate in the primary exchanges' closing auctions, should they choose to do so.[25] Further, enabling CMC users to retain control of their trading for a longer period could encourage participation in CMC by market participants who are unwilling to give up flexibility and control over their MOC orders starting at 3:35 p.m. and may therefore promote competition among MOC order execution venues.

The Exchange also states that CMC's total matched shares information would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at the new proposed MOC Cut-Off Time of 3:49 p.m. According to the Exchange, because of the speeds and widespread use of market technology, market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information into their closing processes.[26] Further, the Exchange states that it discussed the proposed 3:49 p.m. MOC Cut-Off Time with four designated market makers for the primary exchanges who confirmed that, while they do not currently monitor the Cboe Auction Feed, they are technically equipped to do so.[27] Therefore, with a 3:49 p.m. MOC Cut-Off Time, market participants should continue to have opportunities to utilize CMC's total matched shares information, should they choose to do so.[28]

The Commission notes that, other than the extension of the MOC Cut-Off Time, the Exchange proposes no changes to the CMC process.[29] As noted above, the Exchange's survey information and data indicate that CMC users and other market participants could accommodate an MOC Cut-Off Time of 3:49 p.m. and the total matched shares information would be disseminated by the Exchange free of charge at the new MOC Cut-Off Time. Therefore, the Commission believes that the proposed extension of the MOC Cut-Off Time to 3:49 p.m. should not significantly contribute to increased market complexity or operational risk.[30] Finally, the proposed extension of the MOC Cut-Off Time should not adversely impact the ability of existing self-regulatory organization surveillance and enforcement activity to deter market participants who might seek to abuse CMC or use CMC information to abuse a closing auction on a primary exchange.

Based on the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–CboeBZX–2022–038), as modified by Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03162 Filed 2–14–23; 8:45 am]

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[19] 15 U.S.C. 78f(b)(8).

[20] It would be 10 minutes prior to NYSE Arca, Inc.'s MOC cut-off time of 3:59 p.m. *See* Order Instituting Proceedings, 87 FR 72534.

[21] *See id.* at 72530. Specifically, the Exchange discussed the proposed change with the two third-party providers whose end users are responsible for 100 percent of CMC's current volume. These providers indicated that the automated routing and trading solutions that they offer to CMC users can appropriately manage a 3:49 p.m. MOC Cut-Off Time. Additionally, the Exchange discussed the proposed change with approximately 60 potential new CMC users. These market participants indicated that extending the MOC Cut-Off Time would likely encourage them to use CMC as part of their trading strategies because it would enable them to hold onto and trade their orders closer to 4:00 p.m. and make CMC a more viable alternative to the primary exchanges' closing auctions. *See id.* at 72530 n.35.

[22] *See id.* at 72530.

[23] *See id.* at 72531.

[24] *See id.* at 72530. According to the Exchange, because the total matching process typically takes a fraction of a second, with the maximum around one second, with a 3:49 p.m. MOC Cut-Off Time, a user should, in most instances, know the paired CMC quantity no later than 3:49:01 p.m., leaving the user at least 59 seconds to re-route any unpaired MOC orders to the primary exchanges' closing auctions. *See id.* at 72531 n.41.

[25] The Commission solicited comment in the Order Instituting Proceedings on the Exchange's evidence and assertions with respect to these timing considerations and received no contradictory information.

[26] *See* Order Instituting Proceedings, 87 FR 72531.

[27] *See id.* at 72531 n.46.

[28] The Commission also solicited comment in the Order Instituting Proceedings on the Exchange's evidence and assertions with respect to the dissemination of total matched shares information and received no contradictory information.

[29] *See* Order Instituting Proceedings, 87 FR 72528.

[30] Moreover, the Commission previously found that CMC ''should not significantly increase market complexity and operational risk because it will simply constitute an additional optional MOC order execution venue for market participants, and an optional data feed that market participants may choose to monitor for information regarding the total size of matched MOC orders via Cboe Market Close.'' Securities Exchange Act Release No. 88008 (January 21, 2020), 85 FR 4726, 4729 (January 27, 2020) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities under New Exchange Rule 11.28).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96854; File No. SR–CboeEDGX–2023–006]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fees Schedule Concerning Membership Fees and Market Maker Appointment Fees

February 9, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 27, 2023, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Membership fees.[4] First, the Exchange proposes to establish a monthly Participant Fee for Options Members of the Exchange of $500. Additionally, EDGX Options Market Makers would be assessed a Market Maker Participant Fee of $750 per month (*i.e.,* Market Makers would pay a monthly fee of $1,250). The Participant Fees are non-refundable. If a firm becomes a Member during a calendar month after the first trading day of the month, the participant fee for the Member for that calendar month will be prorated based on the remaining trading days in the calendar month.

The Exchange also proposes to adopt fees relating to Market Maker appointments (set forth in the ''Market Maker Appointments Sliding Scale'') which will be based on an Appointment Unit Tier schedule that assigns an appointment weight to each class within a tier. Particularly, EDGX Options Market Makers must select class appointments in the classes they seek to make markets electronically.[5] As proposed, a Market Maker will be charged for one or more ''Appointment Units'' (which will scale from 1 ''unit'' to more than 6 ''units''), depending on which classes they select appointments in. All classes will be placed within a specific tier according to trading volume statistics (excluding the proposed AA Tier), and assigned an ''appointment weight'' depending upon its tier location as follows:

Appointment unit tier	Option class	Appointment weight
AA	IWM	.50
	SPY	.50
	VXX	.100
A*	Classes 1–60	.100
B*	Classes 61–120	.060
C*	Classes 121–345	.040
D*	Classes 346–570	.025
E*	Classes 571–999	.015
F*	All Remaining Classes	.001

* Excludes Tier AA.

The Exchange will rebalance the above tiers (excluding the ''AA'' tier above) once each calendar quarter, which may result in additions or deletions to their composition and announces such rebalances pursuant to Exchange Rule 16.3 at least 10 business days before the rebalance takes effect. The proposed appointment unit tier assignment and rebalances are based on national average daily volume. When a class changes tiers, it will be assigned the appointment unit of that tier. Appointment weights for each assigned class will be summed for each Market Maker ID used to trade to obtain the total appointment units. If the sum of appointments is a fractional amount, the total will be rounded up to the next highest whole Appointment Unit. Total quantity will be determined by the highest quantity used at any point during the month. The following lists the proposed progressive monthly fees for Appointment Units: [6]

Appointment units	Monthly fee
1	$0
2	500
3–5	350
>6	100

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that there is value in becoming a Member of the Exchange and that the proposed Participant Fees are reasonable. The

[4] The Exchange initially filed the proposed fee changes on January 3, 2023 (SR–CboeEDGX–2023–003). On January 27, 2023, the Exchange withdrew that filing and submitted this proposal.

[5] *See* EDGX Options Rule 22.3(a).

[6] For example, if a Market Maker's total appointment units amount to 2.5 units, the Market Maker will be assessed a total monthly appointment fee of $850 (1 appointment unit at $0, 1 appointment unit at $500 and 1 appointment unit at $350).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

proposed fees are also significantly lower than the membership fees imposed by several other options exchanges that charge such fees.[10] They are also comparable to fees assessed by the Exchange's affiliated options exchange Cboe BZX Exchange, Inc. (''BZX Options'').[11] Other national securities exchanges also recently adopted participant fees for their exchange members.[12] The Exchange also historically has not, currently does not, nor does it presently contemplate charging any application fees for Membership nor so-called ''headcount fees,'' (*e.g.,* fees charged for each Form U4 filed for registration of a representative or a principal or the transfer or re-licensing of such personnel,[13]) further highlighting the reasonableness of the proposed Participant Fees. Furthermore, EDGX Options Members have not been assessed any membership-related fees since the platform became available over 7 years ago. Newly-opened exchanges often charge no fees for certain services such as membership, in order to attract order flow to an exchange, and later amend their fees for those services.[14] Allowing newly-opened exchanges time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition.

The Exchange believes that the proposed Participant Fees are not unfairly discriminatory because it would be assessed uniformly across all Members or firms that seek to become Members. Additionally, the Exchange believes that the proposed fees are not unfairly discriminatory because no broker-dealer is required to become a Member of the Exchange. There is also no regulatory requirement that Market Makers connect and access any one options exchange or that any market participant connect to any one particular options exchange. Moreover, a Market Maker membership is not a requirement to participate on the Exchange and participation on an exchange in any capacity is completely voluntary. Indeed, while the Exchange currently has 51 members that trade options, Cboe BZX has 63 members that trade options, Cboe Options has 98 Trading Permit Holders (''TPHs'') (*i.e.,* members) and Cboe C2 has 52 TPHs. There is also no firm that is a Member of EDGX Options only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 73 members,[15] and NYSE Arca Options has 67 members,[16] MIAX Options has 44 members [17] and MIAX Pearl Options has 41 members.[18] BOX Exchange, Inc. (''BOX'') noted in a recent rule change to adopt Electronic Market Maker Trading Permit Fees that it reviewed membership details at three options exchanges and found that there are 62 market making firms across those three exchanges.[19] Particularly, BOX found that 42 of the 62 market making firms access only one of the three exchanges. BOX additionally identified numerous market makers that are members of other options exchanges, but not BOX.

Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange. Indeed, there are currently 15 other registered options exchanges that trade options and one additional options exchange expected to launch in 2023. Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.,* Nasdaq MRX, LLC, MIAX Pearl, LLC, and MIAX Emerald LLC) and one additional options exchange that is expected to launch in 2023 (*i.e.,* MEMX LLC). Notwithstanding the foregoing, the Exchange still believes that the proposed fee of $500 as a monthly Participant Fee, and additional fee of $750 for Market Makers is reasonable, equitably allocated and not unfairly discriminatory, even for a broker-dealer that determines it should join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

The Exchange believes its proposed Market Maker Appointments Sliding Scale fees are also reasonable as its affiliated exchange, Cboe Exchange, Inc. (''Cboe Options''), offers the same structure with respect to fees for appointment classes and as the proposed fees are significantly lower than the Cboe Options fees that were adopted recently in 2020.[20] The Exchange believes the proposed tier compositions, corresponding appointment weights and rebalance process are also reasonable as they are the same as they are for Cboe Options. In addition, other exchanges offer a similar structure with respect to assessing Market-Maker fees based on appointment classes and the proposed fees are again significantly lower than such fees, including the fees just recently adopted by BOX.[21]

[10] *See e.g.,* PHLX Section 8A, Permit and Registration Fees, which generally assesses monthly Permit Fees between $4,000 and $6,000. *See also,* BOX Options Fee Schedule, Section IX Participant Fees, which assesses non-Market Makers a Participant Fee of $1,500 per month and assesses Market Maker's Trading Permit fees between $4,000 and $10,000 per month; NYSE American Options Fees Schedule, Section III(A) Monthly ATP Fees and NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, which assesses a monthly permit (''ATP'') fee of $1,000 for Clearing Members and Order Floor Providers, and a monthly ATP fees up to $8,000 for Market-Makers; and MIAX Options Fee Schedule, Section 3, Membership Fees, which assesses an Electronic Exchange Members Trading Permit fee of $1,500 per month and a Market Maker Trading Permit Fee between $7,000 and $22,000 per month.

[11] *See* Cboe BZX Options Fee Schedule, Membership Fees, which assesses BZX Options Members a monthly fee between $500 and $1,000.

[12] *See e.g.,* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (introduction of membership fees by MEMX). *See also* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17).

[13] *See, e.g.,* ''NASDAQ Membership Fees,'' ($55 for each Form U–4 filed for the registration of a Representative or Principal, and $55 for each Form U–4 filed for the transfer or re-licensing of a Representative or Principal).

[14] *See e.g.,* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (introduction of membership fees by MEMX).

[15] *See https://www.nyse.com/markets/american-options/membership#directory.*

[16] *See https://www.nyse.com/markets/arca-options/membership#directory.*

[17] *See https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_12222021.pdf.*

[18] *See https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Pearl_Options_Exchange_Members_12012021.pdf.*

[19] *See* Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17).

[20] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). *See also* Cboe Options Fees Schedule, Market-Maker EAP Appointments Sliding Scale, which assesses fees between $3,100 to $6,000 per appointment unit versus the proposed Market Maker Appointments Sliding Scale which assesses significantly lower rates between $100 to $500 per appointment unit.

[21] *See e.g.,* NYSE Arca, Inc. (''NYSEArca'') Fee Schedule, which assesses Market Makers $6,000 for up to 175 option issues, an additional $5,000 for up to 350 option issues, an additional $4,000 for up to 1,000 option issues, and an additional $3,000 for all option issues traded on the Exchange. *See* also Miami International Securities Exchange, LLC (''MIAX'') Fee Schedule Fee, which assesses Market Makers $7,000 for up to 10 classes or up to 20% of classes by volume, $12,000 for up to 40 classes or up to 35% of classes by volume, $17,000 for up to 100 classes or up to 50% or classes by volume, and $22,000 for over 100 classes or over 50% of classes by volume up to all classes listed on MIAX. *See* Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) and BOX Exchange Fees Schedule,

Continued

Moreover, as discussed above, there is no regulatory requirement that any market participant, including Market Makers, connect to any one particular options exchange. This is evidenced by the fact that no firm is an EDGX Options only member and further illustrated by the analysis described above by BOX in which it found 42 of 62 market making firms across three exchanges access only one of those three exchanges. Also as noted, a Market Maker membership is not a requirement to participate on the Exchange and participation on an exchange in any capacity is completely voluntary. Accordingly, Market Makers choose if and how to access a particular exchange and because it is a choice; if a Market Maker deems a particular exchange as charging excessive fees to participate, such Market Maker may not connect, and existing Market Makers would disconnect from the Exchange.

The Exchange believes the proposed Market Maker Appointments Sliding Scale fees are equitable and not unfairly discriminatory because they will apply uniformly to all Market Makers, and all similarly situated Market Makers (*i.e.,* those with same number of Appointment Units), will be subject to the same fee. The Exchange also believes that assessing Market Makers that quote in fewer classes lower total fees is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an integral component of the options industry marketplace. The Exchange believes it's equitable and not unfairly discriminatory to assess higher fees for Market Makers that have a higher number of class appointments since they are likely to utilize more bandwidth and capacity on the Exchange's network. The Exchange also notes that other options exchanges assess fees at different rates based upon a member's participation on that exchange, and, as such, this concept is not new or novel.[22] The Exchange lastly believes that the proposed Market Maker Participant and Market Maker Appointments Sliding Scale fees are equitable and not unfairly discriminatory because Market Makers generally consume the most bandwidth and resources of the Exchange's network. As such, the Exchange believes it's equitable and not unfairly discriminatory to assess Market Makers an additional Participant Fee and Market Maker Appointments Sliding Scale fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally. The Exchange also believes that the proposed Market Maker Participant and Market Maker Appointments Sliding Scale fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, as noted above, Market Makers generally consume the most bandwidth and resources of the network.

The Exchange's proposed Participant Fees, including the Market Maker Participant Fee, will be lower than the cost of membership on other exchanges as described in detail above and therefore, may stimulate intermarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, as discussed in the statutory basis section above, participant fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in membership as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[23] of the Act and subparagraph (f)(2) of Rule 19b–4[24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2023–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2023–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

Section 1. Participant Fees, which assesses Market Makers $4,000 for up to 10 option classes, $6,000 for up to 40 classes, $8,000 for up to 100 classes and $10,000 for over 100 classes. By comparison, the Exchange anticipates that EDGX Options Market Makers on average would need approximately 9.5 Appointment Units, costing $2,050 per month for appointment fees.

[22] *Id.*

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2023–006, and should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03160 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–189, OMB Control No. 3235–0201]

Proposed Collection; Comment Request; Extension: Rule 17a–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–27363

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–2 (17 CFR 240.17a–2), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–2—Recordkeeping Requirements Relating to Stabilizing Activities—requires underwriters to maintain information regarding stabilizing activities conducted in accordance with Rule 104 of Regulation M. The collections of information under Regulation M and Rule 17a–2 are necessary for covered persons to obtain certain benefits or to comply with certain requirements. The collections of information are necessary to provide the Commission with information regarding syndicate covering transactions and penalty bids. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under Rule 104(i) (17 CFR 242.104(i)) and Rule 17a–2(c), none of the information required to be collected or disclosed for PRA purposes will be kept confidential. The recordkeeping requirement of Rule 17a–2 requires the information be maintained in a separate file, or in a separately retrievable format, for a period of three years, the first two years in an easily accessible place, consistent with the requirements of Exchange Act Rule 17a–4(f) (17 CFR 240.17a–4(f)).

There are approximately 1,211 respondents per year that require an aggregate total of approximately 6,055 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 5 hours to complete. Thus, the total hour burden per year is approximately 6,055 hours. The total internal compliance cost for the respondents is approximately $490,455 per year, resulting in an internal cost of compliance for each respondent per response of approximately $405 (*i.e.,* $490,455/1,211 responses).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by April 17, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 10, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03231 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96864; File No. SR–FINRA–2022–032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change Relating to Alternative Display Facility New Entrant

February 9, 2023.

On December 20, 2022, Financial Industry Regulatory Authority, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add IntelligentCross ATS as a new entrant to the Alternative Display Facility. The proposed rule change was published for comment in the **Federal Register** on December 27, 2022.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 10, 2023.

The Commission hereby is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96550 (December 20, 2022), 86 FR 79401. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-finra-2022-032/srfinra2022032.htm.*

[4] 15 U.S.C. 78s(b)(2).

to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates March 27, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–FINRA–2022–032).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03163 Filed 2–14–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17781 and #17782; Louisiana Disaster Number LA–00122]

Administrative Declaration of a Disaster for the State of Louisiana

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 02/09/2023.

Incident: Severe Storms and Tornadoes.

Incident Period: 12/13/2022 through 12/14/2022.

DATES: Issued on 02/09/2023.

Physical Loan Application Deadline Date: 04/10/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 11/09/2023.

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 Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parish: Jefferson.

Contiguous Parishes:

Louisiana: Lafourche, Orleans, Plaquemines, Saint Charles, Saint Tammany, St John the Baptist, Tangipahoa.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.625
Homeowners without Credit Available Elsewhere	2.313
Businesses with Credit Available Elsewhere	6.610
Businesses without Credit Available Elsewhere	3.305
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17781 C and for economic injury is 17782 0.

The State which received an EIDL Declaration # is Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–03189 Filed 2–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0315]

Salem Investment Partners III, LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under Section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations on the ability to function as a Small Business Investment Company under License No. 04/04–0315 issued to Salem Investment Partners III, L.P., said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2023–03186 Filed 2–14–23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 02/32–0677]

GCM Grosvenor California Impact SBIC Fund, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, (the ''Act'') under Section 309 of the Act and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 02/32–0677 issued to GCM Grosvenor California Impact SBIC Fund, L.P., said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2023–03187 Filed 2–14–23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[LFE Growth Fund III, L.P.—License No. 05/05–0320; LFE Growth Fund IV, L.P.—License No. 04/04–0359]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that LFE Growth Fund III, L.P. and LFE Growth Fund IV, L.P., 319 Barry Avenue South, Suite 215, Wayzata, MN 55391, both Federal Licensees under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern have sought an exemption under Section 312 of the Act and 13 CFR 107.730, Financings which Constitute Conflicts of Interest, of the Code of Federal Regulations. LFE Growth Fund III, L.P. and LFE Growth Fund IV, L.P. propose to provide equity security financing to Peace Coffee LLC (the ''Company'').

The proposed transaction is brought within the purview of 13 CFR 107.730(a) of the Code of Federal Regulations because LFE Growth Fund III, L.P. and LFE Growth Fund IV, L.P., Associates by virtue of Common Control as defined in 13 CFR 107.50, each hold a greater than 10% equity ownership in the Company. By virtue of their equity ownership in the Company, the Company is considered an Associate, as defined in 13 CFR 107.50, requiring the U.S. Small Business Administration's prior written exemption.

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2023–03188 Filed 2–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17784; Alaska Disaster Number AK–00058 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Alaska dated 02/09/2023.

Incident: 2022/2023 Bering Sea Snow Crab and Bristol Bay Red King Crab Fisheries Closures.

Incident Period: 10/10/2022 through 05/31/2023.

DATES: Issued on 02/09/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 11/09/2023.

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 Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: Aleutian Region REAA, Aleutians East Borough, City and Borough of Juneau, Kenai Peninsula Borough, Kodiak Island Borough, Municipality of Anchorage, Pribilof Islands REAA, Southwest Region REAA.

Contiguous Areas:

Alaska: Chatham REAA, Chugach REAA, Haines Borough, Iditarod Area REAA, Kuspuk REAA, Lake and Peninsula Borough, Lower Kuskokwim REAA, Matanuska-Susitna Borough, Petersburg Borough.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for economic injury is 177840.

The State which received an EIDL Declaration #17784 is Alaska.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–03190 Filed 2–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0309]

Spell Capital Mezzanine Partners SBIC, LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under Section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 05/05–0309 issued to Spell Capital Mezzanine Partners SBIC, LP, said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, Small Business Administration.

[FR Doc. 2023–03191 Filed 2–14–23; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0055]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the United States Department of the Treasury, Internal Revenue Service (IRS). Under this matching program, the IRS will disclose IRS to SSA certain return information for the purpose of establishing the correct amount of Medicare Part B premium subsidy adjustments and Medicare Part D premium increases provided under the Social Security Act (Act), the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act), and the Affordable Care Act of 2010 (ACA).

DATES: Submit comments on the proposed matching program on or before March 17, 2023. The matching program will be applicable on April 1, 2023, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2022–0055 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2022–0055 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401

Security Boulevard, Baltimore, MD 21235–6401, or by emailing *Matthew.Ramsey@ssa.gov*. Comments are also available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Cynthia Scott, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 966–1943, or send an email to *Cynthia.Scott@ssa.gov.com*.

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies

SSA and IRS.

Authority for Conducting the Matching Program

This matching agreement between IRS and SSA is executed pursuant to 6103(l)(20) of the Internal Revenue Code (IRC), which authorizes IRS to disclose specified return information to SSA with respect to taxpayers whose Part B and/or prescription drug coverage insurance premium(s) may (according to IRS records) be subject to premium subsidy adjustment pursuant to section 1839(i) or premium increase pursuant to section 1860D–13(a)(7) of the Act for the purpose of establishing the amount of any such adjustment or increase or for resolving taxpayer appeals with respect to such adjustment or increase.

Sections 1839(i) and 1860D–13(a)(7) of the Act (42 U.S.C. 1395r(i) and 1395w–113(a)(7)) require the Commissioner of SSA to determine the amount of a beneficiary's premium subsidy adjustment, or premium increase, if the modified adjusted gross income (MAGI) is above the applicable threshold as established in section 1839(i) of the Act (42 U.S.C. 1395r(i)).

Purpose(s)

This agreement sets forth the terms and conditions, and safeguards under which the IRS will to disclose to SSA certain return information for the purpose of establishing the correct amount of Medicare Part B premium subsidy adjustments and Medicare Part D premium increases provided under the Act.

Categories of Individuals

SSA will disclose to IRS the name and Social Security number (SSN) of beneficiaries who are either enrolled in, or have become entitled to, Medicare Part B and Part D. IRS will extract and transmit MAGI data for such beneficiaries pertaining to the tax year beginning in the second calendar year preceding the year for which the premium adjustment is being calculated.

Categories of Records

When individuals enroll for the Medicare Part B or Medicare prescription drug coverage, or both, they are entitled to both under 1839(i) and 1860D–13(a)(7) section of the Act. On a weekly basis, SSA will provide IRS with this information with respect to Medicare Part B and Part D beneficiaries.

When there is a match of enrollee identifier, and the MAGI data shows income above the applicable threshold establish pursuant to section 1839(i) of the Act, IRS will disclose to SSA information about the Part B and Part D enrollees who:

a. are enrolled in Medicare under the rules in section 1837 of the Act (42 U.S.C. 1395p) and have not disenrolled from Medicare Part B;

b. have filed applications specifically for Medicare Part B;

c. have been determined to have retroactive Medicare Part B entitlement; or

d. have been provided to SSA as enrolled in Medicare Part D by the Centers for Medicare and Medicaid Services.

Hereinafter, the beneficiaries described above will be referred to as ''enrollees.''

As part of the weekly transmission, SSA will include the name, SSN, premium year, and income threshold amounts for new enrollees. Once each year, on a date in October agreed to at the time between IRS and SSA, SSA will provide the name, SSN, premium year, and income threshold amounts for all enrollees. SSA will use information obtained in this annual request to determine Part B and Part D adjustments for the coming premium year. At the time of the agreed upon annual exchange, SSA will include the name, SSN, premium year, income threshold amounts, and requested tax year with respect to all enrollees who asked SSA to use a more recent tax year or for enrollees for whom IRS provided three year old return information on the initial request. SSA will use the information obtained to correct Part B and Part D adjustment amounts for the requested premium year.

System(s) of Records

SSA's Systems of Records are the Master Beneficiary Record, 60–0090, last fully published at 71 **Federal Register** (FR) 1826 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007), at 78 FR 40542 (July 5, 2013), at 83 FR 31250 and 83 FR 31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018) and the Medicare Database File, 60–0321, last fully published at 71 FR 42159 (July 25, 2006), and amended at 72 FR 69723 (December 10, 2007), and at 83 FR 54969 (November 1, 2018).

IRS will match SSA's information with its Return Transaction File, which is part of the Customer Account Data Engine Individual Master File, Treasury/IRS 24.030, last published at 80 FR 54063 (September 8, 2015).

[FR Doc. 2023–03155 Filed 2–14–23; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11994]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: The dates of notification to Congress are as shown on each of the 24 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://www.pmddtc.state.gov/ddtc* public and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (22 U.S.C. 2776) requires that notifications to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in timely manner.

The following comprise recent such notifications and are published to give notice to the public.

October 3, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical, data and defense services, abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Italy and Qatar to support the manufacture, integration, assembly, operation, training, testing, and maintenance of upper and lower receivers and weapon assemblies.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–021.

October 20, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services, in the amount of 50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Australia, Japan, and Singapore for the manufacture of radios in Japan.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–012.

October 20, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Australia and New Zealand to support the ongoing engineering, maintenance, and logistics support for ''Through Life Support Services'' and sustainment of the C–130J Hercules aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–023.

October 20, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad, including technical data, and defense services controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Jordan of intermediate level maintenance and conversion training, technical support, and specific parts in support of a small arms rifle upgrade program.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–027.

October 20, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia and the Republic of Korea to support the Compliance Upgrade Program (KCUP) for Airborne Early Warning and Control System aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–029.

October 20, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Qatar to support the sustainment, training, logistics, and repair services for the F–15QA aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–030.

October 20, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to the Kingdom of Saudi Arabia, Italy, and Australia for the sale, delivery, installation, and support of radar systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–032.

October 20, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Canada, Germany, and the UK to support the Reconnaissance Surveillance System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–033.

October 20, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Denmark of 7.62mm machineguns and spare barrels.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–047.

November 3, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Germany and the Netherlands to support the integration, installation, testing and training of the MK41 Vertical Launch System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–037.

November 3, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to the UK and Canada to support the design, manufacture, integration, operation, test, and maintenance of missile electronic assemblies.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–038.

November 3, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction involves the transfer of classified and unclassified technical data, defense articles, and defense services to Australia in support of an Australia/United States decoy system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–040.

November 3, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Austria to support the modernization, upgrade, integration, installation, operation, training, testing, maintenance, and repair of the Austrian Integrated Flight Deck (AIFD) for S–70 Blackhawk Helicopters.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–042.

November 21, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Japan in support of the design, development, modification, manufacture, assembly, test, qualification, maintenance, operation, analysis, repair of the components for the STANDARD Missile-3 weapon system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip G. Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–048.

November 21, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan of magnetic detection equipment.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip G. Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–050.

November 21, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Italy to support the integration, modification, and installation of the Joint Airborne Multi-Mission Multi-Sensor System (JAMMS).

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant,

publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip G. Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–052.

November 25, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Brazil of 5.56mm automatic rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–018.

November 25, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Norway, Sweden, and Spain for the design, development and manufacture of small and medium caliber ammunition up to 50mm.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–053.

November 25, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Italy to support the manufacture, production, test, and inspection of wing assemblies and sub-assemblies for aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–054.

December 2, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Belgium and the Netherlands to support the supply of the Command and Liaison Vehicles and associated spare parts, special tools, test equipment, training, and technical support.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–041.

December 2, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, and technical data, in the amount of $50,000,000 or more.

This transaction contained in the attached certification involves the transfer of defense articles and technical data to Ukraine for light-weight UAVs.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–044.

December 8, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed

a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm automatic rifles to Estonia.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–056.

December 15, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Canada and Germany to support the production, structural design, system provisioning, integration, testing, delivery, and certification of the Bombardier Global 6000 Series aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–039.

December 15, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to the Republic of Korea to support the manufacture of jet trainer aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–049.

Zachary A. Parker,

Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2023–03170 Filed 2–14–23; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Crystal Airport, Minneapolis, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change approximately 0.145 acres or 6,319.8 square feet of airport land from aeronautical use to non-aeronautical use and to authorize the granting of a permanent easement of airport property located at Crystal Airport, Minneapolis, Minnesota. The aforementioned land is not needed for aeronautical use. The easement is to be located on the south side of the airport along the northern portion of Vera Cruz Avenue North. The property is currently a public road and the proposed easement to the City of Crystal will allow the City to maintain the existing roadway and other appurtenances associated with City-related services.

DATES: Comments must be received on or before March 17, 2023.

ADDRESSES: Documents are available for review by appointment at the FAA Dakota-Minnesota Airports District Office, Nancy Nistler, Program Manager, 6020 28th Avenue South, Suite 102, Minneapolis, MN 55450. Telephone: (612) 253–4638/Fax: (612) 253–4611.

Written comments on the Sponsor's request must be delivered or mailed to: Nancy Nistler, Program Manager, Federal Aviation Administration, Dakota-Minnesota Airports District Office, 6020 28th Avenue South, Suite 102, Minneapolis, MN 55450. Telephone: (612) 253–4638/Fax: (612) 253–4611.

FOR FURTHER INFORMATION CONTACT: Nancy Nistler, Program Manager, Federal Aviation Administration, Dakota-Minnesota Airports District Office, 6020 28th Avenue South, Suite 102, Minneapolis, MN 55450. Telephone: (612) 253–4638/Fax: (612) 253–4611.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The approximately 0.145 acres or 6,319.8 square feet of land is currently a public roadway. The property was acquired by the Metropolitan Airports Commission (MAC) in 1959 and 1960 through the use of Federal Aid to Airports Program grants. The proposed easement to be granted will allow the City of Crystal (City) to maintain the land as a public roadway. In exchange for the easement MAC proposes to grant to the City, the City will vacate approximately 1.5 acres or 65,500 square feet of existing easement property to MAC for aeronautical purposes.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Crystal Airport, Minneapolis, Minnesota from federal land covenants, subject to a reservation

for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B, Change 2, section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Property Description

A 30 feet wide street, utility, and drainage easement over under and across that part of Lot 23 Auditors Subdivision No. 328 as recorded in Hennepin County Minnesota, which is to be approximately 210.7 feet in length and bound as follows:

Southerly of the northerly line of Block 1, Mork-Campion 3rd Addition as recorded in Hennepin County Minnesota; westerly of a line 60 feet easterly and parallel to the easterly line and its extensions of said Block 1; northerly of the northerly line of the South 103.6 feet of the North One Fifth of the South Half of said Lot 23.

Issued in Minneapolis, MN, on February 8, 2023.

E. Lindsay Butler,

Manager, Dakota-Minnesota Airports District Office, FAA, Great Lakes Region.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0066]

Revised Carrier Safety Measurement System

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: Since 2010, FMCSA has used its Safety Measurement System (SMS) to identify motor carriers for safety interventions. The National Research Council of the National Academy of Sciences (NAS) recommended on June 27, 2017, that FMCSA develop and test a new statistical model. This notice explains FMCSA's analysis and the Agency's proposed changes to SMS, announces FMCSA's preview of the proposed changes, and requests comments and input on the Agency's system to identify motor carriers for safety interventions.

DATES: Comments must be received on or before May 16, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2022–0066 using any of the following methods:

Federal eRulemaking Portal: Go to *https://www.regulations.gov/docket/FMCSA-2022-0066/document.* Follow the online instructions for submitting comments.

Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: Dockets Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Fax: (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Catterson Oh, Compliance Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–6160, *Catterson.Oh@dot.gov.* If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice FMCSA–2022–0066, 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2022-0066/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. 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 and may change this notice based on your comments.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0066/document* and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket in person 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., 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.

Privacy Act

DOT solicits comments from the public to better inform its processes, in accordance with 5 U.S.C. 553(c). DOT posts these comments, without edit, including any personal information the commenter provides, to

www.regulations.gov, as described in the system of records notice (DOT/ALL 14—Federal Docket Management System), which can be reviewed at *www.transportation.gov/privacy.*

Background

SMS Overview

In December 2010, FMCSA implemented SMS to identify high risk motor carriers for investigations (75 FR 18256, April 9, 2010). Section 5305(a) of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94 (Dec. 4, 2015; 129 Stat. 1312) requires FMCSA to ensure, at a minimum, that a review is conducted on motor carriers that demonstrate, through performance data, that they are among the highest risk carriers for four consecutive months. FMCSA and its State enforcement partners also use SMS to identify and prioritize motor carriers for inspections and less resource-intensive interventions, such as automated warning letters.

SMS determines a carrier's prioritization status (*i.e.,* prioritized or not prioritized) in each Behavior Analysis and Safety Improvement Category (BASIC) based on the carrier's on-road performance and/or investigation results. A carrier's relative on-road performance is indicated by its BASIC percentile. Investigation results reflect if any Acute and/or Critical (A/C) violations are found in a given BASIC during investigations. A carrier can be prioritized for interventions because its percentile is at or above the Intervention Threshold and/or it has one or more A/C violations related to a particular BASIC.

SMS also provides motor carriers and other stakeholders with safety performance data, which is updated monthly, through the public website at *http://ai.fmcsa.dot.gov/SMS.* Under section 5223 of the FAST Act, FMCSA removed SMS percentiles and alerts from the public SMS website for motor carriers transporting property. Passenger carrier percentiles and alerts remain publicly available, as well as inspection, investigation, crash, and registration data for all carriers.

SMS quantifies the safety performance of motor carriers using data available in FMCSA's motor carrier database, the Motor Carrier Management Information System (MCMIS). This database includes violations found during inspections, traffic enforcement, and investigations, as well as crash and motor carrier census data. For detailed information on the current structure of SMS, see the SMS Methodology at *http://csa.fmcsa.dot.gov.* A copy of the SMS Methodology is available in the docket for this notice.

FMCSA's analysis has shown that SMS is effective in helping the Agency identify high crash risk carriers for interventions. FMCSA's SMS Effectiveness Test (ET) found that the group of carriers that SMS identified for intervention in one or more BASICs had a crash rate that was 61 percent higher than the group of carriers not identified for intervention. In addition, the group of carriers that met FMCSA's high risk criteria had a crash rate that was 178 percent higher than the national average crash rate. A copy of FMCSA's ET, which was first published in 2014 and updated in 2018, is available in the docket for this notice.

Section 5221 of FAST Act required that NAS conduct a study of FMCSA's Compliance, Safety, Accountability (CSA) program and SMS. Specifically, the FAST Act required that NAS:

(1) shall analyze—

(A) the accuracy with which the Behavior Analysis and Safety Improvement Categories referred to in this part as ''BASIC'')—

(i) identify high risk carriers; and

(ii) predict or are correlated with future crash risk, crash severity, or other safety indicators for motor carriers, including the highest risk carriers;

(B) the methodology used to calculate BASIC percentiles and identify carriers for enforcement, including the weights assigned to particular violations and the tie between crash risk and specific regulatory violations, with respect to accurately identifying and predicting future crash risk for motor carriers;

(C) the relative value of inspection information and roadside enforcement data;

(D) any data collection gaps or data sufficiency problems that may exist and the impact of those gaps and problems on the efficacy of the CSA program;

(E) the accuracy of safety data, including the use of crash data from crashes in which a motor carrier was free from fault;

(F) whether BASIC percentiles for motor carriers of passengers should be calculated separately from motor carriers of freight;

(G) the differences in the rates at which safety violations are reported to the Federal Motor Carrier Safety Administration for inclusion in the SMS by various enforcement authorities, including States, territories, and Federal inspectors; and

(H) how members of the public use the SMS and what effect making the SMS information public has had on reducing crashes and eliminating unsafe motor carriers from the industry; and

(2) shall consider—

(A) whether the SMS provides comparable precision and confidence, through SMS alerts and percentiles, for the relative crash risk of individual large and small motor carriers;

(B) whether alternatives to the SMS would identify high risk carriers more accurately; and

(C) the recommendations and findings of the Comptroller General of the United States and the Inspector General of the Department, and independent review team reports, issued before the date of enactment of this Act.

NAS Study

On June 27, 2017, NAS published a report titled ''Improving Motor Carrier Safety Measurement.'' FMCSA commissioned this report under Section 5221 of the FAST Act. The report is available at *https://www.nap.edu/catalog/24818/improving-motor-carrier-safety-measurement.* However, NAS did not complete all the reviews requested by the FAST Act. The NAS report notes, ''This study is not concerned with non-SMS aspects of CSA, and it is concerned only with CSMS [Carrier SMS], not with DSMS [Driver SMS], but we will refer to our topic as SMS in the remainder of this report.'' The NAS report concluded that SMS, in its current form, is structured in a reasonable way and its method of identifying motor carriers for alert status is defensible. NAS agreed that FMCSA's overall approach, based on crash prevention rather than prediction, is sound. NAS provided FMCSA with six recommendations to improve the system. This notice focuses on FMCSA's actions in response to the first NAS recommendation to develop an Item Response Theory (IRT) model. FMCSA will update its full corrective action plan addressing all six NAS recommendations after reviewing comments to this proposal. The corrective action plan is available on FMCSA's website at *https://www.fmcsa.dot.gov/mission/policy/nas-correlation-study-corrective-action-plan-report-congress.*

Pursuant to the FAST Act, FMCSA submitted the results of this study to both Congress and the DOT Office of Inspector General (OIG) on August 7, 2017. FMCSA also submitted the corrective action plan required by the FAST Act to Congress on June 25, 2018. Copies of the NAS report and FMCSA's action plan are available in the docket for this notice.

OIG reviewed FMCSA's action plan as required by the FAST Act and on September 25, 2019, provided its report titled ''FMCSA's Plan Addresses Recommendations on Prioritizing Safety

Interventions but Lacks Implementation Details,'' available on the OIG's website at *https://www.oig.dot.gov/library-item/37465.* The OIG made two recommendations for FMCSA to provide additional details to improve the corrective action plan in relation to three of the NAS recommendations. FMCSA partially concurred with both recommendations, stating that the Agency would first decide how to move forward with its prioritization methodology before providing the cost estimates and benchmarks recommended by OIG. The OIG considers the recommendations resolved but open pending completion of planned actions. As one of those planned actions, FMCSA conducted a full review of the IRT model and made a decision on how to move forward with the prioritization methodology, which is described in this FRN. A copy of the OIG report is available in the docket for this notice.

IRT Modeling

The NAS report recommended that FMCSA develop an IRT model and ''[i]f it is then demonstrated to perform well in identifying motor carriers for alerts, FMCSA should use it to replace SMS in a manner akin to the way SMS replaced SafeStat.'' FMCSA contracted with NAS for the establishment and operation of a standing committee of experts, as well as with subject matter experts with experience in large-scale IRT modeling, to provide advice and guidance to the Agency during the development and testing of the IRT model. The IRT model was designed and tested using inspection data from FMCSA's MCMIS database. The full modeling report titled, ''Development and Evaluation of an Item Response Theory (IRT) Model for Motor Carrier Prioritization,'' which details the statistical methodologies that were applied in developing and testing the IRT model, is available in the docket for this notice.

The Agency's IRT modeling work revealed many limitations and practical challenges with using an IRT model. As a result, FMCSA has concluded that IRT modeling does not perform well for the Agency's use in identifying motor carriers for safety interventions, and therefore, does not improve overall safety. First, IRT is heavily biased towards identifying smaller carriers that have few inspections with violations and limited on-road exposure to crash risk. When the safety event groups and data sufficiency standards used in SMS were applied to the IRT model, IRT produced similar results to SMS.

Second, IRT does not use Vehicle Miles Traveled (VMT) or Power Units (PUs) to adjust for differences in on-road exposure in the Unsafe Driving BASIC. As a result, IRT identified carriers with much lower crash rates in that BASIC compared to SMS.

Third, IRT modeling is not readily understandable by most stakeholders or the public. IRT's inherent complexity makes it challenging for the industry and public to replicate and interpret results. While SMS results can be reproduced and explained using simple math, IRT requires an advanced understanding of statistical modeling and analysis.

Fourth, a motor carrier cannot independently compute its IRT results. IRT results can be computed only for the entire carrier population. A carrier would not be able to identify how specific violations or areas of regulatory noncompliance impacted its prioritization status or how it could improve its status.

Finally, IRT's runtime is incompatible with FMCSA's operational needs. The IRT model takes four weeks to run as compared to two days for SMS. The long runtime would make it difficult to make even minor changes to the system.

Because IRT is overly complex and adopting the IRT model would reduce transparency without improving safety, FMCSA will not replace SMS with an IRT model. Instead, FMCSA continues its commitment to continuously improving SMS to identify motor carriers that present the highest crash risk through a transparent and effective system.

Changes to SMS

The Agency conducted analyses during the IRT modeling study that revealed areas in which SMS could be improved to better identify high risk carriers for intervention, without the complications inherent in adopting an IRT model. Those improvements include reorganizing the BASICs, now called ''safety categories,'' to better identify specific safety problems and combining the 959 violations used in SMS, plus 14 additional violations not currently used in SMS, into 116 violation groups. In addition, the changes include simplifying violation severity weights, removing percentile jumps that occur when carriers move into a new safety event group, and adjusting the Intervention Thresholds. FMCSA also previously published proposed changes as part of its efforts to improve SMS (81 FR 69185, Oct. 5, 2016). The previously proposed improvements included moving certain Out-of-Service (OOS) violations to the Unsafe Driving BASIC, segmenting the Hazardous Materials (HM) Compliance BASIC, focusing on recent violations, and updating the Utilization Factor.

Taken together, FMCSA proposes the following combined improvements to SMS: (1) reorganized and updated safety categories, including new segmentation; (2) consolidated violations; (3) simplified violation severity weights; (4) proportionate percentiles instead of safety event groups; (5) improved Intervention Thresholds; (6) greater focus on recent violations; and (7) an updated Utilization Factor.

FMCSA conducted the ET to measure the impact of the proposed changes on potential future crash reduction. In addition, the Agency analyzed other measures such as the A/C violation rate, which measures egregious and systemic safety issues found during in-depth investigations. Thus, a high A/C violation rate among prioritized carriers affirms the ability of the prioritization system to identify carriers that are more likely to exhibit these egregious safety issues. In addition to the safety impacts measured with the ET and A/C violation rate, the proposed changes were guided by FMCSA's continuing commitment to enhance the accuracy, fairness, and clarity of its prioritization system.

A document which describes the newly proposed changes and provides additional analysis to support the proposed changes, titled ''Foundational Document'' and dated March 2022, is available in the docket for this notice.

Reorganized and Updated Safety Categories

During the development and testing of the IRT model, FMCSA gained valuable insight and concluded that reorganizing the BASICs, now called ''safety categories,'' could make it easier for FMCSA and motor carriers to pinpoint and address safety issues. FMCSA proposes reorganizing the Controlled Substances/Alcohol, Unsafe Driving, and Vehicle Maintenance safety categories as described below. FMCSA also proposes to segment the Driver Fitness and HM Compliance safety categories to account for differences in carrier operations.

The new safety categories would be: (1) Unsafe Driving; (2) Crash Indicator; (3) Hours of Service (HOS) Compliance; (4) Vehicle Maintenance; (5) Vehicle Maintenance: Driver Observed; (6) HM Compliance; and (7) Driver Fitness. A copy of the complete list of violations in each safety category is available in the docket for this notice and can also be found in Appendix A of the Foundational Document.

Controlled Substances/Alcohol and Unsafe Driving

FMCSA conducted an Exploratory Factor Analysis (EFA) to identify potential new groupings of violations by highlighting statistical relationships between the violations in each BASIC. Controlled Substances/Alcohol has the fewest violations of any BASIC, and those violations are also cited relatively infrequently. The EFA demonstrated that controlled substances and alcohol violations were strongly associated with the Unsafe Driving BASIC and supported removing the Controlled Substances/Alcohol category as a standalone BASIC. The new Unsafe Driving safety category now includes the drug and alcohol violations that were previously captured in the Controlled Substances/Alcohol BASIC.

In addition, FMCSA's analysis found that violations for operating while under an OOS Order issued under the Commercial Vehicle Safety Alliance North American Standard OOS Criteria belong in the new Unsafe Driving safety category. Currently, SMS places these types of violations across multiple BASICs based on the underlying OOS violation. For example, a carrier that had a violation cited against its driver who operated after being placed OOS for an HOS violation and another driver who operated after being placed OOS for a vehicle violation would now have both violations placed in the new Unsafe Driving safety category, rather than one in the HOS Compliance safety category and the other in the Vehicle Maintenance safety category. Moving and consolidating these violations to the new Unsafe Driving safety category would allow motor carriers and enforcement officials to more effectively identify and correct driver-based safety problems related to disregarding OOS Orders.

FMCSA's evaluation of the new Unsafe Driving safety category, illustrated in the table below, showed that this new combined safety category identified more carriers for intervention that were involved in more crashes and had a higher crash rate and A/C violation rate than the groups of carriers identified in the current Unsafe Driving and Controlled Substances/Alcohol BASICs.

Category	Crash rate (crashes per 100 PUs)	Number of crashes	A/C violation rate (violations per 100 investigations)	Number of carriers
Current Unsafe Driving BASIC	10.32	27,255	114.1	12,786
Current Controlled Substances/Alcohol BASIC	5.51	182	84.8	805
Proposed Unsafe Driving Safety Category	10.63	27,550	116.8	13,353

Vehicle Maintenance

Vehicle Maintenance is the largest BASIC in terms of both the number of violation identifiers (*i.e.,* CFR provisions or unique enforcement codes) included in the BASIC and the number of violations cited during inspections. The EFA results showed that breaking this category into two separate categories would provide greater specificity to help carriers improve and enforcement officials to conduct targeted investigations.

Therefore, Vehicle Maintenance violations would be divided into two separate categories: Vehicle Maintenance: Driver Observed, which includes violations that may be identified by a driver during a pre- or post-trip inspection and/or while operating the vehicle; and Vehicle Maintenance, which includes all other vehicle maintenance violations.

FMCSA's evaluation showed that although splitting Vehicle Maintenance into two separate categories identifies groups of carriers with a lower crash rate in each category, more carriers with more crashes are identified for intervention and those carriers have a very similar A/C violation rate, as illustrated in the table below.

Category	Crash rate (crashes per 100 PUs)	Number of crashes	A/C violation rate (violations per 100 investigations)	Number of carriers
Current Vehicle Maintenance BASIC	8.06	23,675	108.4	18,764
Proposed Vehicle Maintenance Safety Category	7.55	19,039	103.8	11,019
Proposed Vehicle Maintenance: Driver Observed Safety Category	7.44	23,618	109.7	17,167
Combined Proposed Vehicle Maintenance and/or Proposed Vehicle Maintenance: Driver Observed Safety Category*	7.47	31,666	107.1	22,092

* Carriers in this row have percentiles above the 80th percentile threshold in one or both proposed new Vehicle Maintenance safety categories. This row is not the sum of the prior two rows since some carriers are prioritized under both new safety categories.

Segmentation in Driver Fitness and HM Compliance

SMS accounts for differences in carrier operations in the Unsafe Driving and Crash Indicator BASICs by segmenting carriers according to whether they primarily operate Combination vehicles (*i.e.,* more than 70 percent of their total PUs) or Straight vehicles. Carriers that are not considered Combination carriers are considered Straight carriers. This segmentation ensures that carriers are compared to other carriers with fundamentally similar exposure to crash risk when operating their vehicles. FMCSA tested whether applying segmentation to other safety categories would improve the identification of the highest risk carriers in those categories. Based on its analysis, FMCSA proposes to segment the Driver Fitness and HM Compliance safety categories to more effectively pinpoint safety issues relating to each operation type. FMCSA determined that segmenting HOS Compliance, Vehicle Maintenance: Driver Observed, and Vehicle Maintenance would not improve those safety categories.

In the Driver Fitness BASIC, carriers that operate Straight trucks and similar vehicles have much higher violation rates than motor carriers that operate

Combination vehicles. Segmenting the Driver Fitness BASIC into Straight and Combination segments more effectively identifies carriers with higher crash rates in both segments. Although fewer carriers were prioritized for intervention in the Driver Fitness BASIC, the carriers that were removed from prioritization had a lower crash rate, which allows the Agency to better focus on those carriers that pose a higher risk to public safety.

The current HM Compliance BASIC compares Cargo Tank carriers to non-Cargo Tank carriers, but these carriers have fundamentally different operations. A carrier is categorized as a Cargo Tank carrier for purposes of segmentation if more than 50 percent of its inspections indicated the vehicles were Cargo Tanks. FMCSA's analysis found that segmenting carriers as Cargo Tank carriers and Non-Cargo Tank carriers in the HM Compliance safety category in conjunction with adjusting the HM Compliance threshold from the 80th to 90th percentile identifies a group of carriers that has (1) an HM inspection violation rate that is 22 percent higher and (2) an HM A/C violation rate that is 46 percent higher than carriers identified for intervention under the current HM Compliance BASIC.

Consolidated Violations

Over the past decade, the number of CFR provisions or distinct enforcement codes used as violations in SMS has grown from about 650 violations to 959 violations. Most of the new violation codes provide more specific descriptions for existing violations and do not reflect new Federal safety regulations. For example, an inspector could cite an inoperative vehicle brake by citing §§ 393.48(a) (Inoperative/defective brakes), 393.45UV (Brake tubing and hose adequacy under vehicle), or 393.45PC (Brake tubing and hose adequacy—connections to power unit).

FMCSA's analysis during IRT modeling confirmed that similar violation provisions could be consolidated to mitigate differences that result from inspectors citing different violation codes. Grouping similar violations together would also allow motor carriers and enforcement officials to identify and address specific safety issues more easily. The following table shows a summary of the consolidated violations by safety category.

Violations in category	Number of violation provisions/codes in SMS	Number of consolidated groups in new system
Unsafe Driving	*59	32
HOS Compliance	73	9
Vehicle Maintenance	406	15
Vehicle Maintenance: Driver Observed	N/A	35
Controlled Substance/Alcohol	11	N/A
HM Compliance	369	14
Driver Fitness	55	11
Total	973	116

*Number includes 14 additional violations for operating while under an OOS Order that are not used in the current SMS methodology.

A report titled, ''New Prioritization System: Proposed Violation Groups,'' which maps the consolidation of the violations, is available in the docket for this notice.

Severity Weights

SMS assigns each violation a specific severity weight that is intended to correlate with the crash risk associated with that violation. The assignment of severity weights to violations in SMS on a scale of 1 through 10 has been criticized as overly subjective. FMCSA tested many different models to improve the severity weights attached to violations in SMS, including models that applied regression analysis and IRT. Based on that analysis, FMCSA proposes to simplify violation severity weights by assigning each consolidated violation group a weight of either one or two. OOS violations and violations in the Unsafe Driving safety category that are disqualifying offenses under 49 CFR 383.51 would be assigned a weight of two and all other violations would be assigned a weight of one. If an OOS violation is combined with a non-OOS violation in the consolidated violation grouping, the consolidated group would be assigned the higher weight of two.

FMCSA's evaluation found that simplifying the severity weights identifies carriers with higher crash rates. This change would maintain the safety focus on those violations severe enough to result in an OOS Order while removing the subjectivity and complications of distinguishing each violation by severity on a scale of 1 through 10.

Proportionate Percentiles

FMCSA places motor carriers into safety event groups in SMS based on their number of inspections and crashes. For example, carriers in the HOS Compliance BASIC with 3 to 10 driver inspections are compared to each other, while carriers with 11 to 20 driver inspections are compared to each other, and so forth. SMS uses violations and crashes to calculate a quantifiable ''measure'' of a motor carrier's safety performance. SMS then ranks carriers within safety event groups by assigning each carrier in the safety event group a percentile rank that compares their measure to the measure of other carriers in the same safety event group. A higher percentile rank in a BASIC indicates that a carrier has a worse measure than other carriers in that safety event group. Safety event groups allow FMCSA to provide safety oversight of carriers of all sizes. Some carriers, however, have experienced large percentile jumps based solely on a no-violation inspection that places them in a new safety event group.

FMCSA proposes to use a new method of ''proportionate percentiles'' that will remove sudden jumps in percentiles, which can occur when a carrier moves into a different safety event group. By removing those percentile jumps, FMCSA would be able to more accurately evaluate whether a carrier's safety performance is improving or declining from month to month. The proportionate percentile approach would use safety event groups only to calculate the benchmark median value of each grouping, which would be calculated periodically. A carrier's proportionate percentile would be calculated from a weighted average of percentiles based on those benchmark medians. After the benchmark run has been established, any changes to a carrier's percentile would be based

solely on the carrier's own safety performance and would not be impacted by the safety performance of other carriers.

The table below provides an illustration of how proportionate percentiles more accurately reflect a carrier's change in safety performance. For a detailed description of the method used to calculate the proportionate percentiles, see the Foundational Document in the docket for this notice.

Example carrier	Current methodology	Proposed methodology
Carrier with 10 inspections	Measure: 1.51 Percentile: 53.0%	Measure: 1.51. Percentile: 67.4%.
Same carrier after receiving 1 additional inspection with no violations (and moving to next largest safety event group, with 11 total inspections).	Measure: 1.37 (↓ .14) Percentile: 75.0% (↑ 22%)	Measure: 1.37. (↓ .14). Percentile: 67.0%. (↓ .4%).

FMCSA's analysis showed that this approach would reduce the number of unexpected jumps in a carrier's percentiles. In addition, the proportionate percentile method would more closely align a carrier's percentile ranking to changes in its safety performance, ensure stable monthly results for carriers, and provide customized results that are specific to the carrier's exact number of inspections or crashes.

Improved Intervention Thresholds

FMCSA prioritizes carriers for safety interventions when their SMS percentiles reach or exceed pre-established levels called Intervention Thresholds. Because higher percentiles represent worse safety performance, a lower Intervention Threshold in a BASIC represents a more stringent safety criterion. FMCSA's ET found that the Unsafe Driving, Crash Indicator, and HOS Compliance BASICs have the strongest correlation to crash risk. Therefore, those BASICs have lower Intervention Thresholds than the other BASICs, at 65 percent for property carriers, 60 percent for HM carriers, and 50 percent for passenger carriers. The Intervention Thresholds for the Vehicle Maintenance, Controlled Substances/Alcohol, and Driver Fitness BASICs currently are set at 80 percent for property carriers, 75 percent for HM carriers, and 65 percent for passenger carriers, and the HM Compliance Intervention Thresholds are set at 80 percent for all carriers.

FMCSA examined whether adjusting the Intervention Thresholds for the Driver Fitness, HM Compliance, Vehicle Maintenance, and Vehicle Maintenance: Driver Observed safety categories could improve the Agency's focus on carriers with the highest crash risk. FMCSA's updated ET continues to show that the Driver Fitness and HM Compliance safety categories have the lowest correlation to crash risk. FMCSA believes raising the Intervention Thresholds in those safety categories, as shown in the table below, would allow the Agency to focus on populations with a greater safety risk.

FMCSA also considered lowering the Intervention Thresholds in the Vehicle Maintenance and Vehicle Maintenance: Driver Observed safety categories. However, because the Agency is now proposing to split Vehicle Maintenance into two safety categories, FMCSA determined that more carriers would be prioritized for vehicle maintenance issues by applying the current Intervention Thresholds to the new Vehicle Maintenance and Vehicle Maintenance: Driver Observed safety categories than are prioritized in the current Vehicle Maintenance BASIC. FMCSA, therefore, does not propose to change the Intervention Thresholds for the Vehicle Maintenance safety categories, as shown in the table below.

Category	Current intervention thresholds			Proposed intervention thresholds		
	Passenger carrier	HM	General	Passenger carrier	HM	General
Vehicle Maintenance	65	75	80	65	75	80
Vehicle Maintenance: Driver Observed	N/A	N/A	N/A	65	75	80
HM Compliance	80	80	80	90	90	90
Driver Fitness	65	75	80	75	85	90

Focusing on Recent Violations

SMS currently assigns percentiles in the HOS Compliance, Vehicle Maintenance, and Driver Fitness BASICs if the last inspection in the past two years resulted in a violation. Under this standard, a carrier may be prioritized for intervention even if the carrier had no recent violation. FMCSA proposes to sharpen the focus on carriers with more recent violations by assigning percentiles only to carriers that had at least one violation in the safety category in the past 12 months. This change means that if all a carrier's violations in a particular safety category are 12 months or older, the carrier will not be assigned a percentile in that category.

FMCSA's evaluation showed that this change would result in 1,081 carriers no longer having a safety category at or above the Intervention Threshold and that those carriers had a crash rate that was 13 percent lower than the national average. Removing carriers with no recent violation in those safety categories would allow the Agency to focus its resources on carriers that pose a greater safety risk.

Updated Utilization Factor

The Utilization Factor in SMS helps to account for a carrier's exposure in the Unsafe Driving and Crash Indicator BASICs. Carriers with higher-than-average exposure to safety events, as measured by VMT per PUs, receive an adjustment in those BASICs. The Utilization Factor currently covers carriers that drive up to 200,000 VMT per PU per year. FMCSA's analysis found that more carriers are reporting higher VMT now than when the Utilization Factor was developed in 2009, and the 314 carriers with 200,000 to 250,000 VMT per PU were involved in about three times as many inspections per PU than the national average. This result indicates that these carriers exhibit much higher exposure to inspections than most carriers. FMCSA

proposes to extend the Utilization Factor to carriers that drive up to 250,000 VMT per PU in the Unsafe Driving and Crash Indicator safety categories to more accurately account for carriers with increased exposure.

Other Changes Considered and Not Proposed

FMCSA analyzed other potential changes to SMS and determined that they would not improve safety, as described below.

Geographic Variation

A consistent criticism of SMS has been that differences among State enforcement agencies in commercial motor vehicle (CMV) inspection and violation rates may lead to unfair SMS results for carriers that operate primarily in States with higher-than-average enforcement rates. During the IRT model design, FMCSA explored a statistical model to better account for enforcement variation among States. That model is detailed in the report titled ''Development and Evaluation of an Item Response Theory (IRT) Model for Motor Carrier Prioritization,'' which is available in the docket for this notice.

FMCSA determined that incorporating a model to account for geographic variation would not improve the Agency's ability to identify high risk carriers and would run contrary to the goals of the Motor Carrier Safety Assistance Program (MCSAP), the Agency's grant program to support State and local efforts to reduce crashes involving CMVs. States face varying challenges to reducing crashes due to different road types, congestion, topography, and weather conditions, among other factors. Through MCSAP, FMCSA encourages States to tailor their crash reduction strategies by addressing local conditions and challenges. Applying a model that de-emphasizes enforcement in certain States would disincentivize FMCSA's MCSAP partners from undertaking enforcement initiatives that are intended to address particular safety issues in their States. FMCSA believes that it should encourage all States to continually raise the bar for safety rather than discounting the safety efforts of certain States.

Crash Indicator

The Crash Indicator BASIC applies severity weights to reportable crashes and places more weight on crashes involving an injury or fatality and crashes involving the release of HM than on tow-away crashes. FMCSA analyzed whether removing severity weights to simplify the calculation would improve this BASIC. Because removing the severity weights from the Crash Indicator BASIC has a minimal impact on the group of carriers identified for intervention, FMCSA does not propose to make this change.

FMCSA also studied the impact of raising the minimum number of crashes required to assign a percentile in the Crash Indicator BASIC from two to three. FMCSA's ET results, however, showed that carriers with exactly two crashes have a future crash rate that is more than twice the national average future crash rate. Approximately two-thirds of those carriers were not prioritized in another BASIC, meaning they would not receive any safety interventions from FMCSA if the data sufficiency standard in the Crash Indicator BASIC were increased from two to three crashes. FMCSA has concluded that raising the minimum number of crashes from two to three in the Crash Indicator BASIC would not improve safety. Crashes that are reviewed through FMCSA's Crash Preventability Determination Program and found to be Not Preventable will continue to be excluded from the prioritization methodology.

Preview

With the February 2023 SMS update, the Agency provided a preview opportunity of the system before implementation, as it has historically done with SMS implementation and enhancements, to allow motor carriers, law enforcement, and other interested stakeholders to see the impacts of these proposed changes on measures, percentiles, and alerts. Motor carriers can log in to the preview at *https://csa.fmcsa.dot.gov/prioritizationpreview/ or* through the CSA website or the FMCSA Portal to see how the proposed methodology may impact their prioritization results. The public can view the new methodology using an example carrier. To support the preview, FMCSA will hold a series of question and answer (Q&A) sessions for the industry and the public, where participants will be able to ask questions about the proposed changes and receive real-time responses. All sessions will have closed captioning. The dates and times for these sessions will be announced on the Agency's website. Before the Q&A sessions, participants have the opportunity to view the preview website *and additional resources at https://csa.fmcsa.dot.gov/prioritizationpreview/_* where they can learn more about the proposed changes and review their results under the proposed methodology. FMCSA encourages all stakeholders to participate in these Q&A sessions.

FMCSA requests comments on the above proposed enhancements, as well as the changes that were considered but are not proposed. In addition, input is requested on other changes that should be considered. Submitters should provide data to support their recommendations.

Robin Hutcheson,

Administrator.

[FR Doc. 2023–02947 Filed 2–14–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0323; FMCSA–2016–0008; FMCSA–2018–0056; FMCSA–2019–0035]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

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 from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, (FMCSA–2015–03023, FMCSA–2016–0008, FMCSA–2018–0056, or FMCSA–2019–0035) 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.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On January 5, 2023, FMCSA published a notice announcing its decision to renew exemptions for seven individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (88 FR 904). The public comment period ended on February 6, and five comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based on its evaluation of the seven renewal exemption applications and the fact that no comments were received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of January and are discussed below.

As of January 1, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 904):

Robert Davidson (ID)
Jordan Hyster (OH)
Everett Letourneau (ND)
Douglas Simms (NC)
Donald Smith (NY)
Ronald Wagner (OH)

The drivers were included in docket number FMCSA–2015–03023, FMCSA–2016–0008, FMCSA–2018–0056, or FMCSA–2019–0035. Their exemptions were applicable as of January 1, 2023 and will expire on January 1, 2025.

As of January 11, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Robert Schauer (IA) has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 904).

This driver was included in docket number FMCSA–2016–0008. Their exemption was applicable as of January 11, 2023 and will expire on January 11, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–03214 Filed 2–14–23; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before March 17, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 7, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		Special Permits Data	
21499–N	Pollution Control Inc	172.320, 173.56(b)	To authorize the transportation in commerce of an explosive for the that has not been examined and classified in accordance with 49 CFR 173.56(b). (mode 1)
21500–N	American Ecycle Inc	173.185(f)	To authorize the transportation in commerce of damaged lithium ion batteries in alternative packaging for destruction or recycling. (mode 1)
21501–N	Luxfer Inc	173.301(f), 173.302(a)	To authorize the manufacture, mark, sale, and use of a non-DOT specification fully wrapped fiber reinforced composite gas cylinder with a non-load sharing plastic liner that meets the ISO 11119–3 standard except for the design water capacity and working pressure. (modes 1, 2, 3, 4)
21504–N	Construction Helicopters, Inc	172.101(j), 173.27(b)(2)	To authorize the transportation in commerce of Division 1.1, 1.2, 1.3 and 1.4 explosives, which are forbidden or exceed quantities authorized for transportation via cargo-only aircraft. (mode 4)
21509–N	KULR Technology Corporation	173.6(a)(1), 173.6(d)	To authorize the transportation in commerce of lithium batteries as Materials of Trade when the quantities of batteries exceed the limitation specified in 173.6. (mode 1)
21510–N	ENK Co. Ltd	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(i), 180.209(a), 180.213.	To authorize the transportation in commerce of certain gases in DOT 3AA, 3AA, or 3T cylinders. The cylinders are retested by acoustic emission and ultrasonic examination (AE/UE) described in paragraph 7 below in place of the internal visual inspection and the hydrostatic retest required in § 180.205. (modes 1, 2, 3, 4, 5)
21512–N	KLA Corporation	171.1	To authorize the transportation in commerce of a Division 4.1 flammable solid within an article as no subject to the requirements of the Hazardous Materials Regulations. (modes 1, 3, 4, 5)
21513–N	The Chemours Company Fc LLC	173.301(f)(2), 177.840(a)(1)	To authorize the transportation in commerce of certain Division 2.1 gases in cylinders without the pressure relief device (PRD) being in communication with the vapor space. (mode 1)
21517–N	Bayerische Motoren Werke Aktiengesellschaft.	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg via cargo-only aircraft. (mode 4)
21518–N	Bedrock Ocean Exploration, PBC	172.101(j)	To authorize the transportation in commerce of prototype lithium batteries exceeding 35 kg via cargo-only aircraft. (mode 4)

[FR Doc. 2023–03208 Filed 2–14–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before March 17, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East

Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 7, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
9847–M	FIBA Technologies, Inc	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.213.	To modify the special permit to change the special permit marking requirements.
11598–M	Metalcraft, Inc	173.301(f), 173.304a(a)(2)	To modify the special permit to authorize an additional hazardous material.
20482–M	Solid Power Operating, Inc	173.35(e)	To modify the special permit to exempt the grantee from 4.1.1.7.1 of the IMDG Code.
21012–M	Linde Gas & Equipment Inc	172.203(a), 180.209, 172.301(c)	To modify the special permit to authorize additional hazardous materials.
21074–M	Zhejiang Meenyu Can Industry Co., Ltd.	173.304(a), 173.304(d)	To modify the special permit to authorize additional inside metal containers.
21088–M	Logbatt Gmbh	173.24(g)	To modify the special permit to authorize additional types of lithium batteries.
21344–N	ZF Dongfang Automotive Safety Technology (Xi'an) Co., Ltd.	173.301(h), 173.302(a)(1)	To authorize authorizes the manufacture, mark, sale, and use of non-DOT specification pressure vessels for use as components of automobile safety systems. The pressure vessels, charged with non-toxic, non-liquefied gases, are authorized for transportation in commerce subject to requirements and limitations specified herein.
21408–N	GFS Chemicals, Inc	173.158(f)(3)	To authorize the transportation in commerce of UN 4G specification packagings for the transport of nitric acid where the primary receptacles are not individually overpacked in tightly closed metal packagings.
21411–N	Thales Alenia Space	172.101(j), 172.300, 173.301(f), 173.302a(a)(1), 173.304a(a)(2), 173.304a(a)(2), 173.185(a)(1).	To authorize the transportation in commerce of prototype and low production lithium ion batteries and certain Division 2.2 liquefied and compressed gases in non-spec packaging (spacecraft).
21474–N	Yiwu Bluefire Camping Industry Co., Ltd.	173.304a(a)(1), 173.304a(d)	To authorize the manufacture, mark, sale, and use of a non-DOT specification non-refillable inside container conforming with all regulations applicable to a DOT specification 2P inner non-refillable metal receptacle except for size, testing requirements, and marking as specified herein, for the transportation in commerce of the hazardous materials authorized by this special permit.
21480–N	Korean Air Lines Co., Ltd	172.101(j)(1), 175.30(a)(1)	To authorize the transportation in commerce of certain explosives that are forbidden for transportation aboard cargo-only aircraft.
Special Permits Data—Denied			
14227–M	Aluminum Tank Industries, Inc.	177.834(h), 178.700(c)(1)	To modify the special permit to authorize an additional use of the packaging.
21435–N	Zhejiang Dongcheng Printing Industry Co., Ltd.	173.304(d)	To authorize the manufacture, marking, sale and use of a non-DOT specification non-refillable inside container similar to a 2Q specification container.
Special Permits Data—Withdrawn			
6293–M	Copperhead Chemical Company, Inc.	173.56(b)	To modify the special permit to add nitrate ester as an authorized material.
6765–M	Messer Group Gmbh	172.203(a), 173.318, 173.318, 176.30(a)(6), 176.76(g).	Agent Guy Dalton retired. Add new agent for Messer Transport and Compliance Billy Stover.

[FR Doc. 2023–03205 Filed 2–14–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before March 2, 2023.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 6, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
15284–M	Solvay Fluorides, LLC	173.31(e)(2)(ii), 173.244(a)(2), 179.15(a).	To modify the special permit to authorize an additional tank car specification. (mode 2)
15721–M	Probe Technology, Services, Inc ...	173.304(a)	To modify the special permit to authorize an additional packaging. (modes 1, 2, 3, 4, 5)
15848–M	Ambri Inc	173.222(c)(1)	To modify the special permit to update the design terminology. (modes 1, 2, 3)
21072–M	Isotek Systems, LLC	173.417(b)(1), 173.427(a)(3), 173.453.	To modify the special permit to increase the total Uranium weight. (mode 1)
21114–M	Olin Winchester LLC	172.203(a), 173.63(b)(2)(i), 173.63(b)(2)(ii), 173.63(b)(2)(iii).	To modify the special permit to authorize rifle cartridge sizes up to 358 Winchester, to authorize an additional packaging, and to remove the requirement to mark the special permit number on inner packages other than bags. (modes 1, 2, 3, 4, 5)
21114–M	Federal Cartridge, Company	172.203(a), 173.63(b)(2)(i), 173.63(b)(2)(ii), 173.63(b)(2)(iii).	To modify the special permit to authorize shotshells to be transported. (modes 1, 2, 3, 4, 5)
21162–M	Hexagon Masterworks, Inc	173.301(a)(1)	To modify the special permit to authorize the transportation of cylinders at less than 5% working pressure. (modes 1, 2, 3, 4)
21235–M	United States Dept of Energy	173.413, 173.416	To modify the special permit to authorize return shipments and higher payload containers. (mode 1)
21396–M	Porsche Cars North America, Inc ..	173.185(f)(3)	To modify the special permit to authorize an additional battery module and transportation aboard cargo vessel. (modes 1, 2, 3)

[FR Doc. 2023–03204 Filed 2–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number DOT–OST–2014–0031]

Agency Information Collection: Activity under OMB Review; Report of Traffic and Capacity Statistics—The T–100 System

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring U.S. and foreign air carriers to file traffic and capacity data pursuant to 14 CFR 241.19 and Part 217, respectively. These reports are used to measure air transportation activity to, from, and within the United States.

DATES: Written comments should be submitted by April 17, 2023.

Comments: Comments should identify the associated OMB approval # 2138–0040 and Docket ID Number DOT–OST–2014–0031. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0040, Docket—DOT–OST–2014–0031. The postcard will be date/time stamped and returned.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 by any of the following methods:

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

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue 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 Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

You may access comments received for this notice at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

FOR FURTHER INFORMATION CONTACT: Jennifer Rodes, Office of Airline Information, RTS–42, Room E34–420, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–8513, Fax Number (202) 366–3383 or EMAIL *jennifer.rodes@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0040.

Title: Report of Traffic and Capacity Statistics—The T–100 System.

Form No.: Schedules T–100 and T–100(f).

Type of Review: Extension of a currently approved collection.

Respondents: Certificated, commuter and foreign air carriers that operate to, from or within the United States.

T100 Form

Number of Respondents: 119.
Number of Annual responses 1,428.
Total Burden per Response: 6 hours.
Total Annual Burden: 8,568 hours.
T100F Form:
Number of Respondents: 190.
Number of Annual responses 2,280.
Total Burden per Response: 2 hours.
Total Annual Burden: 4,560 hours
Needs and Uses:

Airport Improvement

The Federal Aviation Administration uses enplanement data for U.S. airports to distribute the annual Airport Improvement Program (AIP) entitlement funds to eligible primary airports, *i.e.,* airports which account for more than 0.01 percent of the total passengers enplaned at U.S. airports. Enplanement data contained in Schedule T–100/T–100(f) are the sole data base used by the FAA in determining airport funding. U.S. airports receiving significant service from foreign air carriers operating small aircraft could be receiving less than their fair share of AIP entitlement funds. Collecting Schedule T–100(f) data for small aircraft operations will enable the FAA to distribute these funds more fairly.

Air Carrier Safety

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts that are used in developing its budget and staffing plans, facility and equipment funding levels, and environmental impact and policy studies. The FAA monitors changes in the number of air carrier operations as a way to allocate inspection resources and in making decisions as to increased safety surveillance. Similarly, airport activity statistics are used by the FAA to develop airport profiles and establish priorities for airport inspections.

Acquisitions and Mergers

While the Justice Department has the primary responsibility over air carrier acquisitions and mergers, the Department reviews the transfer of international routes involved to determine if they would substantially reduce competition, or determine if the transaction would be inconsistent with the public interest. In making these determinations, the proposed transaction's effect on competition in the markets served by the affected air carriers is analyzed. This analysis includes, among other things, a consideration of the volume of traffic and available capacity, the flight segments and origins-destinations involved, and the existence of entry barriers, such as limited airport slots or gate capacity. Also included is a review of the volume of traffic handled by each air carrier at specific airports and in specific markets which would be affected by the proposed acquisition or merger. The Justice Department uses T–100 data in carrying out its responsibilities relating to airline competition and consolidation.

Traffic Forecasting

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts. These forecasts are used by the FAA, airport managers, the airlines and others in the air travel industry as planning and budgeting tools.

Airport Capacity Analysis

The mix of aircraft types are used in determining the practical annual capacity (PANCAP) at airports as prescribed in the FAA Advisory Circular *Airport Capacity Criteria Used in Preparing the National Airport Plan.* The PANCAP is a safety-related measure of the annual airport capacity or level of operations. It is a predictive measure which indicates potential capacity problems, delays, and possible airport expansions or runway construction needs. If the level of operations at an airport exceeds PANCAP significantly, the frequency and length of delays will increase, with a potential concurrent risk of accidents. Under this program, the FAA develops ways of increasing airport capacity at congested airports.

Airline Industry Status Evaluations

The Department apprizes Congress, the Administration and others of the effect major changes or innovations are having on the air transportation industry. For this purpose, summary traffic and capacity data as well as the detailed segment and market data are essential. These data must be timely and inclusive to be relevant for analyzing emerging issues and must be based upon uniform and reliable data submissions that are consistent with the Department's regulatory requirements.

Mail Rates

The Department is responsible for establishing international and intra-Alaska mail rates. International mail rates are set based on scheduled operations in four geographic areas: Trans-border, Latin America, operations

over the Atlantic Ocean and operations over the Pacific Ocean. Separate rates are set for mainline and bush Alaskan operations. The rates are updated every six months to reflect changes in unit costs in each rate-making entity. Traffic and capacity data are used in conjunction with cost data to develop the required unit cost data.

Essential Air Service

The Department reassesses service levels at small domestic communities to assure that capacity levels are adequate to accommodate current demand

System Planning at Airports

The FAA is charged with administering a series of grants that are designed to accomplish the necessary airport planning for future development and growth. These grants are made to state metropolitan and regional aviation authorities to fund needed airport systems planning work. Individual airport activity statistics, nonstop market data, and service segment data are used to prepare airport activity level forecasts.

Review of IATA Agreements

The Department reviews all of the International Air Transport Association (IATA) agreements that relate to fares, rates, and rules for international air transportation to ensure that the agreements meet the public interest criteria. Current and historic summary traffic and capacity data, such as revenue ton-miles and available ton-miles, by aircraft type, type of service, and length of haul are needed to conduct these analyses: to (1) develop the volume elements for passenger/cargo cost allocations, (2) evaluate fluctuations in volume of scheduled and charter services, (3) assess the competitive impact of different operations such as charter versus scheduled, (4) calculate load factors by aircraft type, and (5) monitor traffic in specific markets.

Foreign Air Carriers Applications

Foreign air carriers are required to submit applications for authority to operate to the United States. In reviewing these applications, the Department must find that the requested authority is encompassed in a bilateral agreement, other intergovernmental understanding, or that granting the application is in the public interest. In the latter cases, T–100 data are used in assessing the level of benefits that carriers of the applicant's homeland presently are receiving from their U.S. operations. These benefits are compared and balanced against the benefits U.S. carriers receive from their operations to the applicant's homeland.

Air Carrier Fitness

The Department determines whether U.S. air carriers are and continue to be fit, willing and able to conduct air service operations without undue risk to passengers and shippers. The Department monitors a carrier's load factor, operational, and enplanement data to compare with other carriers with similar operating characteristics. Carriers that expand operations at a high rate are monitored more closely for safety reasons.

International Civil Aviation Organization

Pursuant to an international agreement, the United States is obligated to report certain air carrier data to the International Civil Aviation Organization (ICAO). The traffic data supplied to ICAO are extracted from the U.S. air carriers' Schedule T–100 submissions.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 Note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued on February 9, 2023.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation.

[FR Doc. 2023–03224 Filed 2–14–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0878]

Agency Information Collection Activity: Edith Nourse Rogers STEM Scholarship

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 17, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0878'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0878'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 115–48 Section 111, and Title 38 U.S.C. Section 3320.

Title: Edith Nourse Rogers Stem Scholarship, VAF 22–10203.

OMB Control Number: 2900–0878.

Type of Review: Revision of a currently approved collection.

Abstract: Section 111 of Public Law 115–48 added new Section 3320 to title 38, U.S.C. Section 3320 authorizes VA to administer the Edith Nourse Rogers STEM Scholarship Program. Under the program, VA provides up to 9 months or $30,000 of Post-9/11 GI Bill benefits to certain eligible individuals selected by the Secretary of VA. To apply for and receive the scholarship, an individual must complete the application, VA Form 22–10203. VA continues to require approval of this information collection so students can continue to apply, and for VA to continue to assess how to prioritize the awarding of the Scholarship, based on the information collected on the form. This collection renewal resulted in a decrease in burden hours due to a significant decrease in the initial number of scholarship applicants that submitted an application for the program during the periods from 2020 and 2021.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,396 hours.

Estimated Average Burden Time per Respondent: 5 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 16,752.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–03152 Filed 2–14–23; 8:45 am]

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Part II

Small Business Administration

13 CFR Part 121
Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AH09

Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or the Agency) is increasing its employee-based small business size definitions (commonly referred to as ''size standards'') for North American Industry Classification System (NAICS) sectors related to Mining, Quarrying, and Oil and Gas Extraction (Sector 21); Utilities (Sector 22); Manufacturing (Sector 31–33); Transportation and Warehousing (Sector 48–49); Information (Section 51); Finance and Insurance (Sector 52); Professional, Scientific and Technical Services (Sector 54); and Administrative and Support, Waste Management and Remediation Services (Sector 56). Specifically, in terms of industries defined under the NAICS 2022 revision, SBA is increasing 144 and retaining 268 employee-based size standards in those sectors. SBA is also retaining the current 500-employee size standard for Federal procurement of supplies under the nonmanufacturer rule.

DATES: This rule is effective March 17, 2023.

FOR FURTHER INFORMATION CONTACT: Samuel Castilla, Economist, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as ''size standards'') for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, September 27, 2010) (''Jobs Act''), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions. SBA also adjusts its monetary-based size standards for inflation at least once every five years. An interim final rule on SBA's latest inflation adjustment to size standards, effective December 19, 2022, was published in the **Federal Register** on November 17, 2022 (87 FR 69118). SBA also updates its size standards every five years to adopt the Office of Management and Budget's (OMB) quinquennial North American Industry Classification (NAICS) revisions to its table of small business size standards. On December 21, 2021, OMB published its ''Notice of NAICS 2022 Final Decisions . . .'' (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for ''the 2022 Revision to the North American Industry Classification System (NAICS), ...'' On July 5, 2022, SBA issued a proposed rule to adopt the OMB's NAICS 2022 revisions for its table of size standards (87 FR 40034), which SBA finalized in September 2022 with an effective date of October 1, 2022 (87 FR 59240; September 29, 2022).

This final rule is part of a series of final rules that revised size standards of industries grouped by various NAICS sectors. Rather than revise all size standards at one time, SBA is revising size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.,* employees or receipts). In the prior review, SBA revised size standards mostly on a sector-by-sector basis. As part of the second five-year review of size standards under the Jobs Act, SBA has already issued five final rules reviewing all monetary-based size standards and all employee-based size standards that are part of the Wholesale Trade and Retail Trade sectors.[1]

To complete its second five-year review of size standards, SBA reviewed size standards under Sector 31–33 and other sectors with employee-based size standards not part of Wholesale and Retail Trade sectors to determine whether the existing size standards should be retained or revised based on the current industry and Federal market data. After its review, SBA published in the April 26, 2022, issue of the **Federal Register** (87 FR 24752) a proposed rule (''April 2022 proposed rule'') to increase the employee-based size standards for 150 industries or subindustries (or ''exceptions'') under NAICS 2017, including 10 industries in NAICS Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), 10 industries in NAICS Sector 22 (Utilities), 120 industries in NAICS sector 31–33 (Manufacturing), five industries in Sector 48–49 (Transportation and Warehousing), three industries in Sector 51 (Information), one subindustry (''exception'') in Sector 54 (Professional, Scientific and Technical Services), and one subindustry (''exception'') in Sector 56 (Administrative and Support, Waste Management and Remediation Services). SBA also proposed to retain the 500-employee size standard under its nonmanufacturer rule.

In this final rule, SBA is adopting the proposed size standards from the April 2022 proposed rule without change and applying the adopted changes to the recently adopted NAICS 2022 structure following the methodology outlined in the NAICS 2022 adoption final rule.

In conjunction with the current, second five-year comprehensive size standards review, SBA developed a revised ''Size Standards Methodology'' (Methodology) for developing, reviewing, and modifying size standards, when necessary. SBA's revised Methodology provides a detailed description of its analyses of various industry and program factors

[1] 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).

and data sources, and how the agency uses the results to establish and revise size standards. In the proposed rule itself, SBA detailed how it applied its revised Methodology to review and modify, where necessary, the existing size standards for industries covered in this final rule. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA's responses, refer to the SBA's April 11, 2019, **Federal Register** notification (84 FR 14587) of the issuance of the final revised Methodology. SBA's Size Standard Methodology is available on its website at *www.sba.gov/size.*

In evaluating an industry's size standard, as described in its Size Standards Methodology as well as in the April 2022 proposed rule, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition and distribution of firms by size) and the small business level and share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each employee-based industry in NAICS Sector 31–33 and other sectors with employee-based size standards, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2012 Economic Census (the latest available when the proposed rule was developed). The 2012 Economic Census special tabulation contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size groupings. To evaluate average asset size, SBA combines the sales to total assets ratios by industry, obtained from the Risk Management Association's (RMA) Annual eStatement Studies (*http://www.rmahq.org/estatement-studies/*) with the simple average receipts size by industry from the 2012 Economic Census tabulation to estimate the average assets size for each industry. SBA also evaluated the small business level and share of Federal contracts in each of the industries using data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2016–2018. Table 4 of the April 2022 proposed rule, Size Standards Supported by Each Factor for Each Industry (Employees), shows the results of analyses of industry and Federal contracting factors for each industry and subindustry (''exception'') covered by the proposed rule. Of the 427 industries and 5 subindustries (*i.e.,* ''exceptions'') reviewed in the proposed rule, the results from analyses of the latest available data on the five primary factors discussed above supported increasing employee-based size standards for 157 industries and 2 subindustries (''exceptions''), decreasing size standards for 216 industries, and maintaining size standards for 54 industries and 3 subindustries (''exceptions''). Table 1, Summary of Calculated Size Standards (NAICS 2017), below, summarizes the analytical results from the April 2022 proposed rule by NAICS sector.

TABLE 1—SUMMARY OF CALCULATED SIZE STANDARDS

[NAICS 2017]

NAICS sector	NAICS sector title	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction	24	15	9	0
22	Utilities	11	11	0	0
31–33	Manufacturing	360	123	187	50
48–49	Transportation and Warehousing	15	5	8	2
51	Information	12	3	7	2
54	Professional, Scientific and Technical Services	7	1	3	3
Other	Agriculture, Forestry, Fishing and Hunting (Sector 11); Finance and Insurance (Sector 52); Administrative and Support, Waste Management and Remediation Services (Sector 56).	3	1	2	0
Total		432	159	216	57

In the April 2022 proposed rule, SBA discussed the impacts of the COVID–19 pandemic on small businesses and greater society. Recognizing the wide-ranging economic impacts of the pandemic, SBA decided not to lower any size standards for which the analysis suggested lowering them. Instead, SBA proposed to maintain all size standards for industries in which the analytical results supported a decrease or no change to size standards and adopt all size standards for which the analytical results supported an increase to size standards, except for nine industries where SBA's evaluation of dominance in field of operation indicated that size standards should be maintained at the current levels to exclude dominant firms and one industry for which SBA proposed to adopt a smaller increase to the size standard also to exclude dominant firms.

In the April 2022 proposed rule, SBA also evaluated the 500-employee size standard applicable to nonmanufacturers participating in the Federal contracting market. SBA's regulations at 13 CFR 121.406 require small business concerns to meet certain requirements when they offer to the Government an end item they did not manufacture, process, or produce. These requirements are known as the nonmanufacturer rule. To qualify for a Federal Government supply contract set aside for small business, a nonmanufacturer must have an average of 500 or fewer employees over the past 24 months, be primarily engaged in wholesale or retail trade activities and supply the product of a U.S. small

manufacturer.[2] In the proposed rule, SBA proposed to retain the 500-employee size standard under the nonmanufacturer rule.

In the Request for Comments section of the proposed rule, SBA requested comments on the appropriateness of the current 500-employee size standard under the nonmanufacturer rule and suggestions for alternative measures to an employee-based size standard that would be more appropriate for size determination of nonmanufacturers.

SBA also sought comments on its proposal to increase size standards for 150 industries and retain the current size standards for the remaining 282 industries or subindustries (''exceptions'') in Sector 31–33 and other sectors with employee-based size standards (excluding Wholesale Trade and Retail Trade Sectors). Specifically, SBA requested comments on whether the proposed revisions are appropriate for the industries covered by the proposed rule; whether the decision not to lower any size standards is justified by considerations of impacts of the COVID–19 pandemic; whether the equal weighting of individual factors to derive an industry size standard is appropriate; and whether the data sources used in developing proposed size standards were appropriate or sufficient. SBA also sought comments on its evaluation of specific industries or subindustries (''exceptions''), including the Information Technology Value Added Resellers (ITVAR) exception to NAICS 541519 (Other Computer Related Services), NAICS 482111 (Line Haul Railroads), NAICS 482112 (Short Line Railroads), the Environmental Remediation Services (ERS) exception to NAICS 562910 (Remediation Services), and certain industries for which SBA adjusted calculated size standards based on its analysis of dominance in field of operation.

To evaluate the impact of the changes to size standards adopted in this final rule on the Federal contracting market and SBA's loan programs, SBA analyzed FPDS–NG data for fiscal years 2018–2020 and internal data on its guaranteed and disaster loan programs for fiscal years 2018–2020. The results of this analysis can be found in the Regulatory Impact Analysis section of this final rule.

In accordance with 13 CFR 121.102(e), SBA advises eligible parties of the option to file a petition for reconsideration of a revised, modified, or established size standard at SBA's Office of Hearings and Appeals (OHA) within 30 calendar days after publication of this final rule in accordance with 15 U.S.C. 632(a)(9) and 13 CFR 134 Subpart I. OHA can be reached using the following contact information: by mail at U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third St. SW, Eighth Floor, Washington, DC 20416, by email at *ohafilings@sba.gov,* by phone at (202) 401–8200 TTY/TRS: 711, or by fax at (202) 205–7059.

Discussion of Comments

SBA received a total of 49 comments on the proposed rule, 37 of which pertained to SBA's proposal to increase the size standard for the ERS exception to NAICS 562910 from 750 employees to 1,000 employees. Of the 37 comments pertaining to the ERS exception, 28 opposed SBA's proposed increase to the size standard and nine supported SBA's proposal. SBA also received five comments pertaining to general size standards issues, two comments that pertained to SBA's proposal to retain the 500-employee size standard under its nonmanufacturer rule, one comment on the ITVAR exception to NAICS 541519, one comment on SBA's proposed size standards for power generation industries, one comment on NAICS 315210 (Cut and Sew Apparel Contractors), one comment on NAICS 333310 (Commercial and Service Industry Machinery Manufacturing), and one comment that was outside the scope of the rule.

As mandated by section 1344 of the Jobs Act, SBA is required to hold not less than two public forums during its quinquennial review of size standards. SBA held two virtual public forums on size standards to update the public on the status of the ongoing second five-year review of size standards and to consider public testimony on changes contained in the April 26, 2022, proposed rule. The two virtual public forums on size standards were held on June 14, 2022, and on June 16, 2022. The comments received during the virtual public forums are included in the count of comments above. All comments to the proposed rule, including those received as part of the virtual public forums, are available at *www.regulations.gov* (RIN 3245–AH09) and are summarized and discussed by topic below.

Comments Received During SBA's Virtual Public Forums on Size Standards

As explained in the Discussion of Comments section above, on June 14 and June 16, 2022, SBA held a series of two virtual public forums on size standards to update the public on the status of the ongoing second five-year review of size standards and to consider public testimony on proposed changes contained in the April 26, 2022, proposed rule. Over the course of the two days, of 87 total participants, SBA received testimony from eight commenters, of which seven provided comments pertaining to the SBA's proposal to increase the size standard for the ERS exception from 750 employees to 1,000 employees and one provided comments pertaining to SBA's increases to size standards generally. Of the seven comments that pertained to the ERS exception, one commenter expressed support for the SBA's proposed increase to the size standard from 750 employees to 1,000 employees, while six commenters opposed the proposed increase, asking for a lower size standard.

Regarding the public forum comments pertaining to the ERS exception, one commenter supporting the SBA's proposed change expressed that by raising the size standard to 1,000 employees, SBA will support the creation of a healthy industrial base of ERS providers for Federal clients and make it easier for small businesses to build the strength and capabilities needed to grow and successfully graduate from small business status. This commenter also urged SBA to consider adopting a size standard of 1,200 employees based on SBA's analysis in the proposed rule of all firms operating under the ERS exception regardless of whether ERS was their primary business activity.

Commenters opposed to SBA's proposed increase to the size standard for the ERS exception expressed that SBA's proposed change would adversely impact smaller small businesses. One commenter also argued that SBA's reliance on Federal contracting data for fiscal years 2016–2018 led the Agency to make incorrect conclusions about industry trends following SBA's prior increase to the ERS size standard from 500 employees to 750 employees, which resulted in SBA proposing a size standard above what SBA's analysis would support if more recent data were used. Specifically, the commenter pointed out that part of SBA's rationale for increasing the size standard for the ERS

[2] On June 6, 2022, SBA issued a final rule implementing section 863 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, which changed the averaging period for calculating employees for SBA's employee-based size standards from 12 months to 24 months (87 FR 34094).

exception is to address the decline in small business participation that occurred during fiscal years 2016–2018; however, the commenter maintained that, based on the latest available data, small business participation has increased significantly since that period. The commenter further explained that one reason for the lag between SBA's previous increase to the size standard for ERS and a corresponding increase in small business participation in the Federal market could be due to the nature of the Federal Government's procurement process in general which in some cases could take months, if not years, to award contracts due to protests, shifting agency priorities, funding levels, and other issues. Moreover, this commenter raised concerns that the Department of Energy's (DOE) reliance on management and operating (M&O) contractors, of which most are large businesses, may have skewed SBA's results. The commenter argued that if SBA excludes DOE's M&O contracts under the ERS exception from its analysis of industry factors, small business participation would be far more robust than what SBA reported in the proposed rule.

Another commenter expressing similar concerns about SBA's use of data from fiscal years 2016–2018 to measure small business participation in the Federal market also urged SBA to consider startup costs in its analysis of the industry size standard and utilize more recent data from the Engineering News-Record (ENR) (an industry trade publication) of the top 200 ENR firms in the industry when describing the economic characteristics of ERS firms. Another commenter urged SBA to consider the Environmental Protection Agency's (EPA) Region 2 Superfund program as a representation of the NAICS 562910 remediation industry. The commenter argued that these program data demonstrate the ability of firms well under the current 750-employee size standard to fulfill the Federal Government's small business remediation requirements; thus, it is unnecessary for SBA to increase the size standard beyond the current threshold as the added competition from larger firms could impact the number of opportunities available for smaller small firms that are already thriving under the current 750-employee size standard. SBA received three comments expressing agreement with this commenter, specifically in support of the notion that the current size standard of 750 employees is already appropriate.

Besides comments pertaining to the ERS exception, during the public forums on size standards, SBA also received one comment from a business operating under NAICS 561110 (Office of Administrative Services) pertaining to SBA's review of size standards generally. The commenter opposed any increases to size standards at this time, citing concerns about an impending economic recession, category management impacts, and best-in-class requirements, which together, reduce small business opportunities and eventually the total number of small businesses participating in the Federal market. The commenter urged SBA to help small businesses facing these concerns by improving its engagement efforts through increased access to financial assistance and other support rather than increasing size standards.

The comments received during the virtual public forums that pertain to the ERS exception closely mirror the public submissions received electronically through the *www.regulations.gov* portal. In fact, many commenters at the virtual public forums also submitted more detailed comments in writing, elaborating on their oral testimony. Thus, SBA is addressing these comments as part of its summary and response to comments under the Comments to the Exception to NAICS 562910 (Environmental Remediation Services) section of this final rule. Similarly, SBA responds to the comment opposing increases to size standards generally as part of its summary and response to comments under the General Comments on SBA's Proposed Changes to Size Standards section of this final rule.

Comments on SBA's Proposed Changes to Power Generation Industries

SBA received one comment from a national trade association representing nearly 900 local electric cooperatives and other rural electric utilities supporting SBA's proposed changes to size standards for industries under NAICS Sector 22 (Utilities). Specifically, the association agreed with SBA's decision to maintain the current size standard for NAICS 221116 and adopt adjusted calculated increases to size standards for NAICS 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, and 221210 based on SBA's analysis of dominance in field of operation.

SBA Response

SBA appreciates the association's comments supporting SBA's proposed size standards for several select industries under Sector 22, Utilities. SBA agrees that the proposed size standards are appropriate in terms of industry market conditions in those industries and believes that the changes will ensure access to SBA's programs for the intended beneficiaries within these industries while excluding the largest and potentially dominant firms from being considered small. Thus, in the absence of opposing comments, SBA is adopting the proposed size standards for Sector 22 industries, as proposed.

Comments on the Federal Procurement Size Standard for Nonmanufacturers

SBA received one comment, expressing support for SBA's proposal to maintain the current 500-employee size standard for nonmanufacturers. The commenter expressed concern that if SBA were to adopt a receipt-based size standard, as explored by SBA in the proposed rule, thousands of firms that currently qualify as small under the 500-employee nonmanufacturer size standard would lose their eligibility to seek set-aside procurements for small businesses. The commenter further explained that a receipts-based size standard would likely limit sales volume for most resellers while also impacting their ability to maintain satisfactory employment levels. Thus, the commenter urged SBA to retain the current 500-employee size standard for nonmanufacturer resellers.

SBA also received one comment opposing SBA's proposal to maintain the current 500-employee size standard for nonmanufacturers. The commenter believed that SBA provided an insufficient and non-compelling rationale for not adopting the calculated size standard of 550 employees for nonmanufacturers, and instead proposing to maintain the current 500-employee size standard. Specifically, the commenter expressed that SBA's rationale to maintain the size standard simply because it is familiar to the industry and working well in practice sets a bad and arbitrary precedent. Thus, the commenter urged SBA to follow the results of its analysis and increase the size standard for nonmanufacturers to 550 employees, as suggested by the results. This commenter also expressed support for maintaining an employee-based size standard for nonmanufacturers rather than adopting a receipts-based size standard.

SBA Response

SBA agrees with commenters that an employee-based size standard is most appropriate for nonmanufacturers. In the proposed rule, as an alternative, SBA calculated a receipts-based size standard of $27 million for nonmanufacturers. However, although SBA evaluated a receipt-based size standard for nonmanufacturers, SBA

believes that adopting a receipts-based size standard, instead of an employee-based size standard, would be inappropriate for several reasons. Specifically, the Small Business Act provides that the size of manufacturing firms be based on the number of employees and that the size of services firms be based on average annual receipts. Adopting a receipts-based size standard under the nonmanufacturer rule, which currently applies only to Government acquisitions for supplies, would cause many manufacturing concerns supplying products to the Government as nonmanufacturers under the nonmanufacturer rule to be evaluated under a receipts-based size standard, which would be contrary to the requirements of the Small Business Act. Moreover, based on data from the 2017 Economic Census, SBA determined that under the calculated $27 million receipts-based size standard, more than 35,000 firms would lose their small business status they currently enjoy under the 500-employee nonmanufacturer size standard. Thus, as proposed, SBA is maintaining an employee-based size standard for nonmanufacturers.

With respect to the comment petitioning SBA to adopt 550 employees as the size standard for nonmanufacturers as suggested by SBA's analytical results, SBA disagrees that its rationale for maintaining the 500-employee size standard is arbitrary. As explained in the proposed rule, the analytical results support raising the size standard for nonmanufacturers from 500 employees to 550 employees. However, to maintain continuity with general public familiarity with and long acceptability of the 500-employee nonmanufacturer size standard, SBA proposed to maintain the current 500-employee size standard. In the proposed rule, SBA clarified why it believed that the 500-employee size standard is appropriate and working well for the majority of firms to which it applies, explaining that the 500-employee size standard for nonmanufacturers is also the most common size standard among the manufacturing industries (NAICS Sector 31–33) where some manufacturers bid on supply contracts under which they do not propose to produce the particular product to be supplied with their own labor force, notwithstanding that they are capable of doing so, and therefore must qualify as small businesses under the nonmanufacturer rule. Thus, SBA believes that maintaining 500 employees as the size standard for nonmanufacturers would promote consistency in its regulations and increase compliance. Therefore, in an effort to minimize the adverse consequences on manufacturers who may provide supplies to the Federal Government as nonmanufacturers under the nonmanufacturer rule, and to promote fair competition among manufacturers and nonmanufacturers, SBA is adopting the predominant 500-employee size standard for manufacturers as the size standard for nonmanufacturers who desire to bid on Federal supply contracts.

Comments on the Application of the Nonmanufacturer Rule to Information Technology Value Added Resellers (ITVARs)

SBA received one comment urging SBA to reconsider whether the nonmanufacturer rule should apply to the ITVAR exception to NAICS 541519 (Other Computer Related Services). The commenter expressed that it may be inconsistent for SBA to apply the nonmanufacturer rule to the ITVAR exception when most or all of the supplies provided by resellers under this exception would fall under one of the NAICS codes for which class waivers currently exist.

SBA Response

As stated in Footnote 18 to SBA's table of size standards at 13 CFR 121.201, for a Federal contract to be classified under the ITVAR exception and its 150-employee size standard, it must consist of at least 15 percent, but not more than 50 percent of value-added services. In addition, the offeror must comply with the manufacturing performance requirements, or comply with the nonmanufacturer rule by supplying the products of small business concerns, unless SBA has issued a class or contract specific (individual) waiver of the nonmanufacturer rule.

While SBA agrees with the commenter that class waivers may already exist for some IT products commonly purchased using the ITVAR exception, SBA also acknowledges that not all IT products procured through the ITVAR exception have a waiver of its nonmanufacturer rule. Moreover, considering the rapid pace of development in the IT industry, SBA believes that it is not unreasonable to assume that there will be new products purchased by the Federal Government using the ITVAR exception in the future that likewise do not qualify for a waiver. Thus, by eliminating the nonmanufacturer rule for the exception, SBA could disadvantage small firms who are currently offering, or plan to offer products not subject to a class waiver.

SBA also believes it would be inconsistent with the intent of the Small Business Act if ITVAR resellers could provide the supplies produced primarily by a large original equipment manufacturer (OEM), or other large manufacturers, without a waiver of the nonmanufacturer rule. SBA is concerned that without the compliance with the nonmanufacturer rule, the ITVAR exception may allow small IT resellers to simply serve as ''pass throughs'' for large OEMs and other large manufacturers. While SBA recognizes that the nonmanufacturer rule may work better for some products than for others, it strongly believes that the rule must apply to all supply contracts equally. Thus, like all other products and supplies, the nonmanufacturer rule must also apply to IT products, including those purchased through the ITVAR exception. Therefore, SBA is retaining the requirement that the supply component of small business set-aside ITVAR contracts must comply with the manufacturing performance requirements or the SBA's nonmanufacturer rule.

Comments on NAICS 315210 (Cut and Sew Apparel Contractors)

SBA received one comment petitioning SBA to increase the size standard for NAICS 315210 (Cut and Sew Apparel Contractors) from 750 employees to 1,500 employees. The commenter maintained that the manufacture of personal protection equipment (PPE) by Cut and Sew Apparel Contractors and the reliance of the Federal Government on this industry to satisfy strategic objectives related to sourcing PPE equipment and supplies domestically suggests that the threshold should be larger than 750 employees. Elaborating on this idea, the commenter explained that increasing the size standard would allow PPE manufacturers to sufficiently scale up their operations to meet the Federal Government's demand at lower costs. Moreover, the commenter presented data to show the high fixed costs of production and relative labor intensity of Cut and Sew Apparel Contractors relative to other manufacturing industries, which the commenter believed justified an increase to the size standard when considering the strategic importance of firms within the Cut and Sew Apparel Contractor industry. The commenter also argued that, due to the pandemic, the distribution of goods being produced by Cut and Sew Apparel Contractors has changed, and as a result,

these companies must invest significantly more in property, plant, and equipment if they are to become more cost-efficient producers of PPE. The commenter explained that in order to meet the Federal Government's demands for quality and quantity of goods for PPE purchases, companies must be larger, both in terms of capital investment and employment size. However, the commenter did not provide any data on industry and Federal contracting factors showing why the size standard for the Cut and Sew Apparel Contractor industry should be increased from 750 employees to 1,500 employees.

SBA Response

SBA disagrees with the commenter's argument that SBA should increase the size standard for NAICS 315210 based on the industry's importance to Government purchases of PPE. Specifically, SBA believes that the commenter may have mis-identified the proper NAICS code for which Government purchases of PPE normally fall under. Based on the NAICS manual, available at *www.census.gov/naics,* NAICS 315210 comprises firms that are commonly referred to as contractors that are primarily engaged in (1) cutting materials owned by others for apparel and accessories and/or (2) sewing materials owned by others for apparel and accessories. Normally, Federal Government purchases of PPE do not fall under this NAICS code as Government purchases of PPE are normally to acquire new materials and equipment, and not to modify materials and equipment already owned by the Federal Government. Instead, Government purchases of PPE usually fall under NAICS 339112 (Surgical and Medical Instrument Manufacturing), NAICS 339113 (Surgical Appliance and Supplies Manufacturing), or NAICS 423450 (Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers) [3] with Product Service Code (PSC) 6515 (Medical and Surgical Instruments, Equipment, and Supplies). Based on an analysis of FPDS–NG data for fiscal years 2018–2020, SBA found that less than 0.1 percent of Government purchases under PSC 6515 fall under NAICS 315210 while nearly 80 percent of Government purchases under PSC 6515 occur under one of the three aforementioned NAICS codes. Since PSC 6515 includes a broad range of supplies, SBA also analyzed the data by keywords to identify contracts for PPE, including respirators, masks, surgical gowns, and other PPE. SBA again found that NAICS 315210 was insignificant in terms of the total dollars obligated towards purchases of these PPE items. Thus, SBA does not agree that the industry's importance to Federal Government purchases of PPE warrants an increase to the size standard in NAICS 315210 in order to enable the industry to meet greater demand for PPE.

Moreover, SBA's analysis of industry factors, as presented in Table 4 of the April 2022 proposed rule, supported a calculated size standard of only 450 employees for NAICS 315210. However, in response to the economic challenges presented by the COVID–19 pandemic and the measures taken by Federal Government to protect public health, SBA decided to adopt a policy to not lower size standards during the ongoing second five-year review of size standards in order to reduce the economic impacts to small businesses. Thus, SBA proposed to retain the current size standard for NAICS 315210 at 750 employees even though the data supported 450 employees. Based on the 2017 Economic Census data, 99.8 percent of firms are already small under the current 750-employee size standard for NAICS 315210. Increasing the size standard to 1,500 employees might include the largest and potentially dominant firms as small, which would run counter to the Small Business Act requirement that the size standards must exclude dominant firms from being qualified as small.

Regarding the industries that most accurately classify purchases of PPE, namely NAICS 339112 and NAICS 339113, SBA has proposed to retain the current size standard for NAICS 339112 at 1,000 employees and increase the size standard for NAICS 339113 to 800 employees based on the analysis of industry and Federal contracting factors. While the commenter submitted data on the costs of employment for firms operating under NAICS 315210 relative to other manufacturing industries, the provided data are not at the 6-digit industry level and do not demonstrate that SBA's analysis of NAICS 339112 and 339113 is insufficient. Thus, for the above reasons, SBA is not adopting the commenter's recommendation to increase the size standard for NAICS 315210 from 750 employees to 1,500 employees, nor is SBA adopting 1,500 employees as the size standard for other three NAICS codes under which solicitations for PPE are normally categorized.

Comments on the Exception to NAICS 562910 (Environmental Remediation Services)

As explained above in the Discussion of Comments section of this final rule, SBA received a total of 37 comments pertaining to SBA's proposal to increase the size standard for the Environmental Remediation Services (ERS) exception to NAICS 562910 from 750 employees to 1,000 employees. Of the 37 comments pertaining to the ERS exception, 28 (including six comments opposing SBA's proposal received during SBA's virtual public forums on size standards) opposed SBA's proposed increase and nine (including one comment supporting SBA's proposal during the virtual public forums) supported SBA's proposal. Below, SBA summarizes and responds to comments supporting the SBA's proposed change to the ERS size standard, then summarizes and responds to comments opposing the SBA's proposed change.

Comments Supporting SBA's Proposed Change to the ERS Exception

A total of nine comments were received supporting SBA's proposal to increase the size standard for the ERS exception from 750 employees to 1,000 employees. One commenter supporting SBA's proposed increase to the size standard argued that SBA's current 750-employee size standard is too restrictive and has been a detriment to many companies in the industry. The commenter expressed that adopting a 1,000-employee size standard would remove the restraint and allow for further growth for companies without forcing them to prematurely graduate from the small business status and to compete with larger firms with more resources when they exceed the size standard.

An additional four commenters, submitting nearly identical comments, supported SBA's proposed increase to the ERS size standard for similar reasons, expressing that SBA's proposed increase would allow additional firms to participate in Federal contracting as small businesses, increase small business competition, and ultimately reverse the downward trend in small business share of ERS contract dollars from fiscal years 2013 to 2018. These commenters further expressed that their business would benefit from SBA's proposed change due to the increased capabilities they could achieve under a larger size standard which would allow them to take on larger and more complex remediation projects. One

[3] Per the requirements at 13 CFR 121.402(b)(2), acquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code, not under a Wholesale Trade or Retail Trade NAICS code, however, FPDS–NG data shows that some contracting activity may be misclassified under these NAICS codes.

commenter also supported SBA's proposal based on the belief that the Federal Government will have access to an expanded pool of more capable small businesses to meet the demand for the surge in ERS requirements expected as part of the implementation of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021). Three commenters petitioned SBA to increase the size standard for the ERS exception to 1,200 employees based on SBA's analysis in the proposed rule which showed support for a size standard as high as 1,200 employees when including data from the largest firms whose principal business activities were generally unrelated to ERS.

Referring to an opposing comment received during SBA's virtual public forums on size standards that urged SBA to exclude the Department of Energy (DOE) contracts from its analysis of the ERS exception due to DOE's unique reliance on large M&O contractors, one commenter expressed that the notion of excluding such procurements, which are often related to nuclear remediation, is in direct contradiction to the definition of the ERS subindustry, as stated in Footnote 14 of SBA's Table of Size Standards at 13 CFR 121.201. The commenter explained that this footnote specifically lists nuclear remediation as an eligible activity and further argued that the justification for excluding DOE contracts from the analysis simply because they are dominated by large businesses is not sufficient. This commenter also opposed using the Engineering News-Record (ENR) top 200 environmental firms list as a source of industry data for evaluation of the ERS size standard as suggested by one commenter at the virtual public forums, because the data do not cover the whole industry and may contain subjective measures of revenue that do not comport with SBA's definitions.

SBA Response

SBA agrees with commenters supporting SBA's proposed increase to the size standard for the ERS exception that adopting a size standard of 1,000 employees would extend the runway for firms to grow while still allowing access to SBA's contracting and financial assistance programs. SBA also believes that increasing the size standard to 1,000 employees would improve competition in the industry and help small businesses to earn more Federal contracting dollars and compete for more complex environmental remediation projects, including those that may become newly available as a result of the Infrastructure Investment and Jobs Act.

As explained in the proposed rule, the procurement data analyzed by SBA showed that the dollars awarded by firms' employment size were concentrated among the largest firms. Specifically, small firms with less than or equal to 750 employees received about 37 percent of the total ERS dollar awards during fiscal years 2016–2018, while firms with more than 5,000 employees accounted for about 60 percent of the total ERS contract awards, with two firms alone accounting for almost 40 percent of the total awards under ERS activities. Firms between 750 employees and 5,000 employees accounted for 3.5 percent of the total ERS contract dollars. Procurement data from FPDS–NG for fiscal years 2019–2021 analyzed by SBA showed an increase in the small business share of ERS contract dollars to 43.5 percent and a decrease in the share of the largest firms (*i.e.,* those with more than 5,000 employees) to 54 percent, with two of them alone accounting for about 34 percent of total ERS dollars during that period. Firms between 750 employees and 5,000 employees accounted for remaining 2.5 percent. While the small business share of ERS contract dollars increased from about 37 percent during fiscal years 2016–2018 to about 43.5 percent during fiscal years 2019–2021, this is still smaller than the corresponding share of about 50 percent during fiscal years 2013–2015.

Thus, SBA believes that the large skewness in the distribution of ERS firms by the number of employees, the large percentage of ERS contracting dollars being concentrated among very large firms, a decrease in the small business share of total ERS awards compared with fiscal years 2013–2015, and the analysis of industry factors according to the SBA's Size Standards Methodology outlined in the proposed rule support SBA's proposal to increase the ERS size standard to 1,000 employees. SBA believes that its proposal to increase the size standard to 1,000 employees will further increase small business participation in the industry over time.

Regarding the adoption of a higher calculated size standard of 1,200 employees for the ERS industry, SBA does not believe that the calculated size standard of 1,200 employees accurately reflects the economic characteristics of firms primarily engaged in the business activities related to the ERS exception since this calculation was based on untrimmed data, and thus, included very large firms whose primary activity was likely unrelated to the ERS exception. Moreover, in response to comments pertaining to using the ENR data on the top 200 environmental firms, SBA agrees with commenters supporting SBA's increase to the ERS size standard that this dataset is not comprehensive enough for SBA's size standards purposes. For example, SBA's analysis of the ERS industry included 974 firms participating in Federal contracting under the exception to NAICS 562910 during fiscal years 2019–2021, while the ENR dataset suggested by the commenters only includes the top 200 environmental firms.[4] In order to reliably evaluate the size standard of any industry, SBA must rely on comprehensive data that is representative of the economic trends of the entire industry, rather than only the top firms.

Comments Opposing SBA's Proposed Change to the ERS Exception

Of the 28 comments opposing SBA's proposed change to the size standard for the ERS exception, 27 comments expressed similar arguments for why SBA should retain the current 750-employee size standard for the ERS exception, including 21 comments submitted through the *regulations.gov* rulemaking portal, of which 20 were nearly identical, and six comments submitted orally through SBA's Virtual Public Forum on Size Standards. Many of these 27 commenters, including the 20 commenters that submitted nearly identical comments, and at least two commenters at SBA's Virtual Public Forum on Size Standards were part of a group of firms using data from FEDMINE, a business intelligence provider specializing in Federal Government contracting, as the basis for their comments. One commenter whose comment was also based on the FEDMINE report provided a list of 52 other firms that endorsed their comment. The remaining commenters that did not reference FEDMINE data provided similar reasons as those outlined by commenters using FEDMINE data for opposing SBA's proposed increase to the ERS size standard.

One commenter opposed to SBA's proposed size standard increase for the ERS exception raised issues other than those identified by the above 27 commenters, including establishing a separate NAICS industry specifically for munitions and unexploded ordnance

[4] 974 is the number of firms after the removal of entities with null revenue and null number of employees as well as the identified Government entities and manufacturing firms. This number is the total entities participating in the ERS activity before trimming the data.

services. Below, SBA summarizes and responds to these opposing comments separately.

Comments Opposing SBA's Proposed Change to the ERS Exception for Similar Reasons

SBA received 27 comments petitioning SBA to retain the current 750-employee size standard for the ERS exception based on similar arguments, including six comments received during the virtual public forums on size standards and 21 comments received through the *www.regulations.gov* rulemaking portal of which 20 were almost identical. The commenters commissioned FEDMINE, a business intelligence provider specializing in Federal Government contracting, to prepare a report on their behalf regarding Federal spending under the ERS exception for fiscal years 2016–2021.

The commenters objected to SBA's proposed increase to the ERS size standard on the grounds that more recent data shows that SBA's calculation of the small business share of the Federal market under NAICS 562910 is understated, and therefore, undermines SBA's justification for increasing the size standard in order to help small businesses better compete for contracting opportunities. Specifically, according to the commenters' analysis, the amount of Federal dollars awarded to small businesses under the ERS exception increased nearly 50 percent, from about $1.4 billion in 2016 to about $2.1 billion in 2021. The commenters also provided data showing that the small business share of the ERS Federal spend increased from 35 percent in 2018 to 46 percent in 2021. The commenters argued that increasing the share of ERS Federal dollars obligated to small firms demonstrates, contrary to SBA's analysis, that the prior increase in the size standard for the exception from 500 employees to 750 employees was effective in increasing competition in the Federal market under the ERS exception (81 FR 4436 (January 26, 2016)). The commenters contended that SBA should evaluate data beyond fiscal year 2018 for purposes of analyzing the ERS exception because most Federal dollar obligations under the exception are awarded under indefinite delivery contracts (IDCs), and as such, SBA should recognize that there was a lapse of time between when the ERS size standard was increased in 2016 until IDCs were awarded and significant dollars were obligated to small businesses under the new size standard.

These commenters also maintained that the DOE's unique procurement methods, including the Agency's reliance on management and operating (M&O) contracts which are typically awarded to large firms, have a significant influence on SBA's calculations due to DOE's high proportion of total dollars obligated under the ERS exception. Thus, commenters urged SBA to exclude DOE contracts from the analysis since they do not accurately reflect market conditions outside of the DOE.

Regarding the influence of DOE's procurement trends on SBA's calculations, the commenters presented data showing the percent of DOE's ERS contracts dollars obligated to small businesses and the proportion of total ERS awards attributable to the DOE. The data submitted by commenters showed that for fiscal years 2016–2021, on average, DOE awarded only about seven percent of ERS contracting dollars to small businesses while comprising nearly 50 percent of total Federal ERS spending. The commenters maintained that unlike other Federal agencies, DOE awards nearly all ERS work through its M&O contractors, which are exclusively large businesses. For example, the commenters added, in fiscal year 2021, of the $1.2 billion that DOE awarded under the exception, only $3.2 million (0.3%) was awarded to non-M&O contracts. Subtracting the large business M&O dollars from the DOE's total ERS dollars, the commenters found that the small business share of total dollars was 97.8 percent. The commenters also argued that since most M&O contractors are joint ventures between two or more large businesses, each with employee counts far in excess of the SBA's size threshold, no reasonable increase in the ERS size standard would influence the ability of small businesses to compete at the prime level in the DOE M&O market and that the contracting dollars awarded to small business is not likely to increase simply because the number of businesses considered small under the exception has grown.

Regarding the dollars obligated to small businesses outside of DOE, the commenters presented data showing that since fiscal year 2016, the share of non-DOE ERS contract dollars awarded to small businesses increased from an average of 53 percent in fiscal years 2013–2015 to an average of 63 percent in fiscal years 2016–2018, and to an average of 78 percent in fiscal years 2019–2021.

Moreover, the commenters expressed concern with SBA's impact analysis which showed that two additional small businesses would gain access to small business set aside opportunities under the proposed 1,000-employee size standard for the ERS exception. Specifically, the commenters expressed that these newly eligible firms may adversely impact smaller small businesses competing for Federal contracts under the exception. The commenters argued that the addition of larger and more experienced firms may take away future opportunities from currently small firms that are adequately meeting small business procurement needs of Federal agencies.

During SBA's virtual public forums on size standards, SBA received comments expressing similar concerns as those outlined above regarding SBA's use of data from fiscal years 2016–2018 to measure small business participation in the Federal ERS market. One commenter also urged SBA to consider startup costs in its analysis of the industry size standard and utilize more recent data from the ENR, an industry trade publication, which describes the economic characteristics and primary business activities of the top 200 engineering/environmental firms in the industry down to the subsector level. Another commenter urged SBA to consider Environmental Protection Agency's (EPA) Region 2 Superfund program as a representation of the ERS industry. The commenter argued that these program data demonstrate the ability of small firms well under the current 750-employee size standard to fulfill the Federal Government's remediation requirements; thus, it is unnecessary for SBA to increase the size standard beyond the current threshold as the added competition from larger firms could impact the number of opportunities available for smaller small firms that are already thriving under the current size standard. Additional commenters at the virtual public forums agreed with the commenter's assertion that the current 750-employee size standard for the ERS exception is adequate.

For the above reasons, these commenters concluded that SBA's 2016 increase in the ERS size standard from 500 employees to 750 employees successfully increased small business participation in ERS contracts and preserved competition within the industry. As such, the commenters urged SBA to maintain the current 750-employee threshold instead of adopting 1,000 employees, as proposed.

SBA Response

SBA has reviewed the data provided by the above commenters and has determined that the results largely agree with the latest available data that SBA evaluated in response to the commenters' arguments, as we

discussed in the section *Comments Supporting SBA's Proposed Change to the ERS Exception* above. Moreover, consistent with the commenters, SBA found that DOE awards accounted for 49.2 percent of total dollars obligated under the ERS exception, of which only about 8.5 percent were awarded to small businesses through prime contracts.

However, although SBA's further analysis of the ERS industry confirmed some of the data submitted by commenters as presented above, SBA also found important differences in the commenter's position and SBA's evaluation, particularly in regards to SBA's evaluation of size standards generally and the proportion of dollars awarded by DOE under the exception through M&O contracts, a special class of contracts under which the Federal Government contracts for the operation, management, or support, on its behalf, of a government-owned or -controlled establishment devoted to one or more major government programs.

Regarding SBA's evaluation of size standards generally, in the proposed rule, SBA described its methodology for evaluating industry structure to derive size standards based on five primary factors including: average firm size (simple and weighted average firm size factors), startup costs and entry barriers (average assets size factor), industry competition (four-firm ratio factor), distribution of firms by size (Gini coefficient factor), and small business success in receiving Federal contracts under the current size standard (Federal contracting factor). As detailed in Table 4 of the April 2022 proposed rule, based on the data for fiscal years 2016–2018, SBA found that three of the five industry factors analyzed supported raising the size standard for the ERS industry above the current 750 employee threshold. Specifically, the factors for simple and weighted average firm size supported a size standard of 1,500 employees while the average assets size and Gini coefficient supported size standards of 850 employees and 1,250 employees, respectively. Only the four-firm ratio supported a size standard lower than 750 employees.

With respect to the Federal contracting factor, which measures small business participation in the Federal market in terms of the share of total Federal contract dollars awarded to small businesses relative to the small business share of an industry's total receipts, SBA found that the 750-employee size standard was appropriate. Based on SBA's Size Standards Methodology, if the share of Federal contract dollars awarded to small businesses in an industry is significantly smaller than the small business share of total industry's receipts, all else remaining the same, a justification would exist for considering a size standard higher than the current size standard. In cases, where small business share of the Federal market is already appreciably high relative to the small business share of the overall market, SBA generally assumes that the existing size standard is adequate with respect to the Federal contracting factor. Thus, regarding the ERS exception specifically, using the FPDS–NG data for fiscal years 2016–2018, SBA calculated a Federal contracting factor to be 64.2 percent, indicating the small business share of the Federal market is appreciably high relative to the small business share of industry receipts, which supported a size standard of 750 employees. Based on this result, SBA agrees with commenters that small businesses in the ERS industry are well-represented in the Federal contracting marketplace under the current 750-employee size standard and have adequate Federal contracting opportunities.

In the proposed rule, as an additional indicator, SBA also considered the change in the share of total ERS contract dollars awarded to small businesses from fiscal years 2013–2015 (under the 500-employee size standard) to fiscal years 2016–2018 (under the 750-employee size standard), finding that the small business share decreased from about 50 percent during fiscal years 2013–2015 to about 37 percent during fiscal years 2016–2018. This result, alongside SBA's analysis of industry factors demonstrated that an additional increase to the ERS size standard was warranted in order to optimize and protect the number of opportunities available to small businesses in the ERS industry. However, SBA notes that this additional indicator was not the primary basis for SBA's proposed increase to the size standard for the ERS exception. SBA's further analysis of data from fiscal years 2019–2021 showed that the small business share of total ERS contract dollars increased to 43.5 percent from 37 percent in fiscal years 2016–2018; however as previously stated, this is not a primary factor in SBA's comprehensive analysis of the ERS industry nor is it the sole basis for prescribing the size standard for the industry.

Based solely on the Federal contracting data, SBA agrees that the 750-employee size standard is appropriate for the ERS industry. However, while SBA believes that analyzing Federal contracting trends, including the Federal contracting factor, are an important component of SBA's evaluation of industry size standards, SBA's size standards methodology does not provide for the weighting of one factor more than others. In other words, the methodology establishes that SBA will give equal weights to all five primary factors that are considered in the evaluation of an industry size standard. Thus, SBA believes that the proposed size standard for the ERS industry, which is based on SBA's comprehensive evaluation of industry and Federal contracting factors, accurately reflects the economic characteristics of the industry, including the high level of small business participation in the Federal marketplace.

Regarding DOE's M&O contracts, SBA generally recognizes the special nature of M&O contracts which have received special regulatory treatment under Subpart 17.6 of the FAR. For example, when evaluating agency contracting performance under SBA's procurement scorecard assessment tool, starting from fiscal year 2015, SBA evaluates DOE's prime contracting performance by including M&O first tier subcontracts pursuant to 15 U.S.C. 644(g)(3). Thus, SBA believes commenters may be justified in requesting that SBA count DOE's M&O first tier subcontracts as prime contracts consistent with SBA's procurement scorecard methodology. However, SBA does not agree with commenters that the dollars obligated through DOE's M&O contracts should be excluded altogether from the evaluation of the industry size standard since M&O contracts are a valid and important part of the overall Federal contracting landscape, and because the DOE accounts for roughly half of total ERS contract dollars. SBA believes that excluding M&O contracts from the evaluation of size standards, particularly for purposes of calculating the Federal contracting factor, would lead to unreliable results in industries where M&O contracts are used prominently.

Moreover, SBA found that, contrary to the commenter's suggestion, it is not true that the majority of DOE contracts classified under the ERS exception are M&O contracts.[5] SBA obtained data from the DOE listing its M&O contractors and showing the proportion of total dollars awarded under the ERS exception to M&O contractors for fiscal years 2016–2021. The data showed that the DOE did not award any contracts

[5] See Guidance on the Department of Energy Subcontracting Program, *Section 1.2 Background.*

under the ERS exception to firms classified as an M&O contractor.

Based on data from the Electronic Subcontracting Reporting System (eSRS), SBA found that small businesses were well represented in DOE's first tier subcontracts classified under NAICS 562910. Specifically, SBA analyzed the data from fiscal years 2016–2021 and found that, when accounting for the dollars awarded to small businesses through first-tier subcontracts, about 57 percent of total dollars awarded by DOE under the ERS exception passed through to small businesses. Thus, even if SBA considered all DOE awards under the exception as M&O contracts and therefore counted the first-tier subcontracts as prime contracts, SBA believes that the evaluation would reflect a high degree of small business participation under the ERS exception, which, as explained above, is consistent with SBA's results under the proposed rule.

Nonetheless, in response to the commenters' petition, SBA conducted an analysis of the ERS industry using updated FPDS–NG data from fiscal years 2019–2021 following the same methodology as detailed in the proposed rule and in the SBA's Size Standards Methodology. SBA's analysis using the more recent data did not support a size standard lower than the SBA's proposed 1,000-employee size standard. In fact, except for the weighted average firm size, values of each industry factor based on the data for fiscal years 2019–2021 were higher than those based on the data for fiscal years 2016–2018. Although the weighted average firm size was lower in fiscal years 2016–2018, weighted average firm size still supported a 1,500-employee size standard. The Federal contracting factor based on the data for fiscal years 2019–2021 continued to support the 750-employee size standard.

Regarding petitions by commenters for SBA to use alternative sources of data to evaluate industry characteristics, specifically data from the ENR on the top 200 environmental firms and EPA's Region 2 Superfund program, SBA disagrees that these sources would provide the best representation of the ERS industry. SBA believes these data are not comprehensive enough for SBA's purposes. For example, SBA's analysis of the ERS industry included 974 firms participating in Federal contracting under the exception to NAICS 562910 during fiscal years 2019–2021, while the ENR dataset only includes the top 200 environmental firms. In order to reliably evaluate the size standard of any industry, SBA must rely on comprehensive data that is representative of the economic trends of the entire industry, rather than only the top firms, or those associated with one agency's contracting program.

SBA does not agree with the commenters that a few larger firms that would qualify as small under the proposed 1,000-employee size standard would have significant adverse impacts on small businesses under the current 750-employee size standard in terms of access to Federal opportunities to smaller small firms. The relevant data does not demonstrate that the previous increase in size standard from 500 employees to 750 employees had a significant adverse impact on small businesses below 500 employees in terms of accessing Federal small business opportunities. For example, firms below 500 employees accounted for 84 percent of total ERS dollars awarded to small businesses during fiscal years 2019–2021.

SBA believes that increasing the size standard to the proposed 1,000-employee level based on its comprehensive evaluation of industry and Federal contracting factors may increase the number of set-asides in this industry and further benefit the small firms that are already well-represented in the Federal contracting market at the current 750-employee size standard. SBA believes that increasing the size standard to 1,000 employees will expand the runway for small businesses to compete for more complex remediation projects while also ensuring that the Federal Government has access to a larger pool of qualified small businesses to select from when issuing solicitations for ERS. As such, based on SBA's evaluation of the above public comments pertaining to the ERS exception and SBA's analyses of industry and Federal contracting factors, SBA is adopting 1,000 employees as the size standard for ERS as proposed in the April 2022 proposed rule.

Comments Opposing SBA's Proposed Change to the ERS Exception for Other Reasons

One commenter opposing SBA's proposed increase to the size standard for the ERS exception from 750 employees to 1,000 employees argued that since SBA's analysis of Federal procurement data from fiscal years 2016–2018 in the proposed rule showed that the dollars obligated to small businesses decreased significantly despite an increase to the size standard from 500 employees to 750 employees in 2016, SBA should forego increasing the size standard again, and instead, pursue other methods of increasing small business participation. Specifically, the commenter petitioned SBA to task, demand, encourage and/or impose on Federal agencies higher small business participation goals. The commenter also argued that SBA's proposed size standard increase would adversely impact competition because currently small firms would find it difficult to compete with larger firms with more advanced capabilities. The commenter also urged SBA to implement rules and/or programs to support smaller firms within the ERS industry, for example, by creating a class of set-aside opportunities reserved for firms with fewer than 50 employees. The commenter also expressed concerns over what they viewed as discriminatory and inconsistent application of NAICS code selection by contracting officers when determining the applicable NAICS code for munitions response services, which are sometimes misclassified under the ERS exception rather than the general NAICS 562910 or some other more appropriate NAICS codes. The commenter maintained that while some munitions remediation projects may require engineers for planning purposes (*i.e.,* NAICS 541330) and geophysical survey and mapping services (*i.e.,* NAICS 541360), these services represent only a small portion of the contract dollars spent (usually 10–20%) on a munitions remediation project. The commenter further explained that the overwhelming majority of funds allocated to munitions remediation projects are spent on unexploded object (UXO) technicians and labor to remove and dispose of the UXOs. Thus, citing the requirements of ERS solicitations under Footnote 14, the commenter argued that, since greater than 50 percent of the work related to munitions remediation would be attributable to a single NAICS code, the requirements for classifying the solicitation under the ERS exception are not met. To remedy the misclassification of contracts for munitions remediation services, the commenter recommended that SBA create a separate NAICS code for munitions and UXO services and issue guidance to contracting officers on the appropriate use of the ERS exception.

SBA Response

SBA disagrees with the comment that SBA should forego increasing the size standard for the ERS exception and instead pursue other methods of increasing small business participation, including higher small business goals for Federal agencies and creating separate set-aside opportunities for smaller small firms. SBA believes that establishing appropriate size standards

for industries based on its Size Standards Methodology is not mutually exclusive to conducting other engagement efforts to increase small business participation.

Moreover, SBA believes that the aforementioned comment is largely beyond the scope of this rulemaking as the proposed rule did not propose any changes to SBA's goaling guidelines for Federal agencies, nor did SBA propose establishing a separate class of set-aside opportunities for smaller small businesses. By increasing the size standard for the ERS exception to 1,000 employees, SBA will extend the runway for firms to grow while also ensuring that small businesses retain access to SBA's contracting and financial assistance programs. Increasing the size standard to 1,000 employees will also improve competition in the industry and help small businesses to earn more Federal contracting dollars and compete for and perform more complex environmental remediation projects.

Regarding the misclassification of munitions remediation projects under the ERS exception rather than the general NAICS 562910, or some other more appropriate NAICS codes, SBA notes that it is ultimately the responsibility of the contracting officer to designate the proper NAICS code based on the principal purpose of the product or service being acquired (13 CFR 121.402(b)). SBA does not believe that changes to size standards, including the creation of new NAICS industries or exceptions, is an appropriate tool to address incorrect NAICS code selections by contracting officers. More importantly, SBA does not have authority to create new NAICS codes. SBA has established a process for affected parties to appeal with SBA's Office of Hearings and Appeal (OHA) a contracting officer's NAICS code designation in its regulations at 13 CFR 121.1101. SBA encourages impacted firms to use this process when they believe that a contracting officer has miscategorized a solicitation under an improper NAICS code.

For the reasons stated above, SBA is not adopting the recommendations of the commenter and is instead adopting 1,000 employees as the size standard for the ERS exception, as proposed in the proposed rule.

General Comments on SBA's Proposed Changes to Size Standards

SBA received four comments pertaining to its proposed changes to size standards generally, including one comment submitted orally as part of SBA's virtual public forum on size standards. Of the four comments received, two commenters supported SBA's proposed changes to size standards while two commenters opposed the SBA's proposal. One commenter supported SBA's increases to size standards, specifically for industries under NAICS Sector 54, but only for agencies other than the Department of Defense (DOD). The commenter expressed concern that complex compliance requirements and other factors make it too costly for small businesses to compete against larger established businesses and that increases in the size thresholds would only exacerbate this problem. The commenter did not specify which size levels would be more appropriate for the Sector 54 industries covered under this rule or offer data in support of their position. Another commenter supported SBA's proposed changes to size standards because they believed the changes would be beneficial to all small businesses, particularly to those involved in government contracting.

Regarding the opposing comments, one commenter expressed opposition to SBA's increases to size standards in general, specifically for dump truck operators due to the increased competition that small operators face from larger mid-sized trucking firms. The commenter also urged SBA to look into the commercial insurance industry which has, according to the commenter, more than doubled insurance rates over a timespan of just a few months. The commenter did not specify which NAICS codes were the subject of their comment, nor did they recommend any actions SBA should take to address their comment on the commercial insurance industry.

SBA also received one comment opposed to SBA's changes to size standards from a business operating under NAICS 561110 (Office Administrative Services). The commenter opposed any increases to size standards at this time, citing concerns about an impending economic recession, category management impacts, and best-in-class requirements which together reduce small business opportunities and the total number of small businesses. The commenter urged SBA to help small businesses facing these concerns by improving its engagement efforts through increased access to financial assistance and other support rather than increasing size standards.

SBA Response

SBA agrees with commenters supporting SBA's proposed changes to size standards that the proposed changes are beneficial to small businesses and will increase the number of Federal contracting opportunities available for small businesses. However, SBA disagrees with the comment supporting SBA's proposed changes in Sector 54, but only for agencies other than DOD. SBA does not believe that size standards should differ among Federal agencies based on the contracting preferences or requirements of each agency as this would result in a complicated regime of size standards that may fluctuate along with an agency's budget and priorities instead of the economic characteristics of the industry in which a firm operates. Moreover, to evaluate the size standards for industries within Sector 54, SBA relied on its size standards methodology. SBA's size standards methodology describes how its analyses of various industry and program factors are used to establish and revise size standards based on the latest data available. Thus, SBA believes that the size standards adopted in this final rule, including for industries within Sector 54, appropriately reflect the intended beneficiaries of SBA programs. Thus, SBA is adopting the size standards for industries in Sector 54 without change.

SBA also disagrees with the comment that expressed opposition to SBA's increases to size standards in general, but specifically for dump truck operators, urging SBA to take action to address increased insurance costs imposed by the commercial insurance industry. SBA believes that this comment is out of the scope of this rulemaking as dump truck operators normally operate under NAICS 484220 (Specialized Freight (except Used Goods) Trucking, Local), NAICS 532120 (Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing), or NAICS 562119 (Other Waste Collection), all of which have receipts-based size standards and were not covered under the proposed rule. Moreover, SBA does not have the authority to regulate the commercial insurance industry, which operates mostly under industries with receipt-based size standards not covered under this rule. It is also unclear how an adjustment to size standards within the commercial insurance industry would translate to lower insurance premiums for small business owners. Thus, SBA is not adjusting the size standards for any industries in response to this comment.

SBA also disagrees with the comment opposing any increases to size standards based on various concerns including the broader economic environment and certain Federal contracting trends that are reducing opportunities for small businesses. SBA believes that all small

businesses will benefit under a size standard that is appropriate to their industry. SBA's changes to size standards help small businesses to remain competitive in the Federal market and ensure that SBA's services go to their intended beneficiaries. Moreover, Table 9 of this final rule, Impacts of Increasing Size Standards, below, demonstrates the benefits of size standards increases, which would remain unrealized if SBA were to not adopt any increases to size standards. For example, based on its impact analysis, SBA estimates that increasing size standards would result in additional contracting opportunities for more than 100 small businesses worth nearly $257 million. Thus, based on SBA's estimation of the positive net benefits accruing to small businesses as a result of the changes to size standards, SBA disagrees with the commenter that increases to size standards are harmful to small businesses. Therefore, SBA is adopting proposed increases to size standards as presented in the proposed rule.

Comments Pertaining to Other Issues

SBA received three comments pertaining to issues other than those already discussed above. One commenter, representing an optics manufacturer, in anticipation of SBA's adoption of Office of Management and Budget's (OMB) NAICS 2022 industry structure, petitioned SBA to adopt 1,000 employees as the size standard for NAICS 333310, which is a newly defined industry under NAICS 2022 encompassing elements from NAICS 333314, 333316, and 333318. The commenter argued that adopting the higher size standard would expand the runway for small businesses in this industry to compete against a greater number of large competitors with greater resources. Another commenter petitioned SBA to require all United States Department of Agriculture (USDA) regulated entities with current USDA certification status to be available for periodic surveys and questionnaires regarding their ability to spot, detect and report human trafficking. Another commenter petitioned SBA to reconsider the current minimum and maximum size threshold values for employee-based size standards. The commenter expressed concern with SBA's language in the proposed rule describing the minimum size standard as the size an established small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts, but does not account for small businesses that are newly formed or just starting operations. The commenter maintained that, contrary to SBA's language, as small businesses adopt new technologies and innovation, it is possible to have adequate capabilities and resources to perform Federal contracts without a high employee count. Thus, the commenter urged SBA to explore measures such as financial statements, sales revenue, years in business and other applicable methods to determine capability and competency. The commenter also argued that SBA's minimum thresholds affect small business access to Federal procurement.

SBA Response

SBA agrees with the comment petitioning SBA to adopt 1,000 employees as the size standard for NAICS 333310 under the NAICS 2022 industry structure. On July 5, 2022, SBA published a proposed rule in the **Federal Register** with proposed revisions to size standards based on OMB's NAICS 2022 structure (87 FR 40034). In the proposed rule, SBA proposed 1,000 employees as the size standard for NAICS 333310 and adopted the proposed size standard in a final rule, effective October 1, 2022 (87 FR 59240; September 29, 2022). In this final rule, SBA is adopting changes to size standards based on the NAICS 2017 structure and applying the adopted changes to the recently adopted NAICS 2022 structure. SBA's NAICS adoption analysis, presented in this final rule under the section ''Applying the Adopted Changes to the NAICS 2022 Structure,'' supports adopting 1,000 employees as the size standard for NAICS 333310 based on SBA's established NAICS adoption methodology.

Regarding the comment petitioning SBA to establish reporting requirements for certain operators under USDA's regulations, SBA notes that it does not have authority to regulate the trucking industry, nor does the Agency have purview over any USDA's certification programs. Thus, SBA has determined that this comment is totally outside the scope of this final rule.

Regarding the comment petitioning SBA to reconsider the current minimum and maximum threshold values for employee-based size standards, SBA evaluated employee-based size standards under this rule using its ''Size Standards Methodology'' (Methodology), issued on April 11, 2019, and available at *www.sba.gov/size.* SBA's Methodology provides a detailed description of its analyses of various industry and program factors and data sources, and how the agency uses the results to establish and revise size standards. Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA's responses, refer to the SBA's April 11, 2019, **Federal Register** notification of the issuance of the final revised Methodology (84 FR 14587).

Pursuant to the Methodology, SBA has established 250 employees and 1,500 employees, respectively, as the minimum and maximum size standard levels for Manufacturing and other industries (excluding Wholesale and Retail Trade) with employee-based size standards. Accordingly, SBA will not generally propose or adopt a size standard that is either below the minimum level or above the maximum, even though the calculations yield values below the minimum or above the maximum levels. As stated in the proposed rule, the minimum size standard reflects the size an established small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts (but does not account for small businesses that are newly formed or just starting operations). On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would outcompete much smaller businesses when accessing Federal small business assistance. SBA notes that SBA's table of size standards at 13 CFR 121.201 only defines the largest a business can be and still be considered small. As such, although SBA uses 250 employees as the minimum size threshold for SBA's analysis of size standards, firms with less than 250 employees may still qualify as small businesses since they would be below the size threshold for their respective industry. Thus, SBA does not agree with the commenter that maintaining a minimum threshold for purposes of analysis of industry factors disadvantages small firms below the minimum threshold or excludes them from contracting opportunities. Moreover, SBA believes that this comment is likely beyond the scope of this rulemaking as the proposed rule did not propose any changes to SBA's Size Standards Methodology, which was finalized through notice and comment process in April 2019. SBA notes that the size standards reflect the maximum

size a business can be to be considered small.

Summary of Adopted Revisions to Size Standards

Based on the evaluation of public comments it received on the proposed rule and on its analyses of industry and Federal contracting factors using the latest available data when the proposed rule was prepared along with considerations of impacts of the ongoing COVID–19 pandemic, in this final rule, SBA is adopting the size standards as proposed in the April 26, 2022, proposed rule. Thus, SBA is increasing size standards for 150 industries under NAICS 2017, including 10 industries in NAICS Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), 10 industries in NAICS Sector 22 (Utilities), 120 industries in NAICS Sector 31–33 (Manufacturing), five industries in Sector 48–49 (Transportation and Warehousing), three industries in NAICS Sector 51 (Information), and one subindustry (or ''exception'') each in NAICS Sector 54 (Professional, Scientific and Technical Services) and in NAICS Sector 56 (Administrative and Support, Waste Management and Remediation Services). SBA's size standards revisions adopted in this rule can be found in Table 2, Adopted Size Standards Revisions (NAICS 2017). Also presented in Table 2 are current and calculated size standards for comparison.

TABLE 2—ADOPTED SIZE STANDARDS REVISIONS

[NAICS 2017]

NAICS 2017 code	NAICS 2017 industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed/ adopted size standard (employees)
212113	Anthracite Mining	250	600	250
212210	Iron Ore Mining	750	1,400	1,400
212222	Silver Ore Mining	250	1,100	250
212230	Copper, Nickel, Lead, and Zinc Mining	750	1,400	1,400
212291	Uranium-Radium-Vanadium Ore Mining	250	900	250
212299	All Other Metal Ore Mining	750	1,250	1,250
212313	Crushed and Broken Granite Mining and Quarrying	750	850	850
212319	Other Crushed and Broken Stone Mining and Quarrying	500	550	550
212322	Industrial Sand Mining	500	750	750
212324	Kaolin and Ball Clay Mining	750	1,050	750
212325	Clay and Ceramic and Refractory Minerals Mining	500	650	650
212391	Potash, Soda, and Borate Mineral Mining	750	1,050	1,050
212392	Phosphate Rock Mining	1,000	1,350	1,000
212393	Other Chemical and Fertilizer Mineral Mining	500	600	600
212399	All Other Nonmetallic Mineral Mining	500	600	600
221111	Hydroelectric Power Generation	500	750	750
221112	Fossil Fuel Electric Power Generation	750	950	950
221113	Nuclear Electric Power Generation	750	1,150	1,150
221114	Solar Electric Power Generation	250	700	500
221115	Wind Electric Power Generation	250	1,150	1,150
221116	Geothermal Electric Power Generation	250	1,050	250
221117	Biomass Electric Power Generation	250	550	550
221118	Other Electric Power Generation	250	650	650
221121	Electric Bulk Power Transmission and Control	500	950	950
221122	Electric Power Distribution	1,000	1,100	1,100
221210	Natural Gas Distribution	1,000	1,150	1,150
311111	Dog and Cat Food Manufacturing	1,000	1,250	1,250
311119	Other Animal Food Manufacturing	500	650	650
311211	Flour Milling	1,000	1,050	1,050
311212	Rice Milling	500	750	750
311213	Malt Manufacturing	500	900	500
311221	Wet Corn Milling	1,250	1,300	1,300
311224	Soybean and Other Oilseed Processing	1,000	1,250	1,250
311225	Fats and Oils Refining and Blending	1,000	1,100	1,100
311230	Breakfast Cereal Manufacturing	1,000	1,300	1,300
311313	Beet Sugar Manufacturing	750	1,150	1,150
311314	Cane Sugar Manufacturing	1,000	1,050	1,050
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	1,000	1,100	1,100
311422	Specialty Canning	1,250	1,400	1,400
311511	Fluid Milk Manufacturing	1,000	1,150	1,150
311512	Creamery Butter Manufacturing	750	1,000	750
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing.	750	1,000	1,000
311611	Animal (except Poultry) Slaughtering	1,000	1,150	1,150
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour.	750	850	850
311920	Coffee and Tea Manufacturing	750	1,000	1,000
311930	Flavoring Syrup and Concentrate Manufacturing	1,000	1,100	1,100
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing.	750	850	850
311942	Spice and Extract Manufacturing	500	650	650
311991	Perishable Prepared Food Manufacturing	500	700	700
311999	All Other Miscellaneous Food Manufacturing	500	700	700

TABLE 2—ADOPTED SIZE STANDARDS REVISIONS—Continued

[NAICS 2017]

NAICS 2017 code	NAICS 2017 industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed/ adopted size standard (employees)
312111	Soft Drink Manufacturing	1,250	1,400	1,400
312112	Bottled Water Manufacturing	1,000	1,100	1,100
312140	Distilleries	1,000	1,100	1,100
313220	Narrow Fabric Mills and Schiffli Machine Embroidery	500	550	550
313230	Nonwoven Fabric Mills	750	850	850
314999	All Other Miscellaneous Textile Product Mills	500	550	550
315190	Other Apparel Knitting Mills	750	850	850
315990	Apparel Accessories and Other Apparel Manufacturing	500	600	600
316110	Leather and Hide Tanning and Finishing	500	800	800
316992	Women's Handbag and Purse Manufacturing	750	850	750
321113	Sawmills	500	550	550
321114	Wood Preservation	500	550	550
321211	Hardwood Veneer and Plywood Manufacturing	500	600	600
322110	Pulp Mills	750	1,050	1,050
322122	Newsprint Mills	750	1,050	1,050
323111	Commercial Printing (except Screen and Books)	500	650	650
323120	Support Activities for Printing	500	550	550
324122	Asphalt Shingle and Coating Materials Manufacturing	750	1,100	1,100
324191	Petroleum Lubricating Oil and Grease Manufacturing	750	900	900
324199	All Other Petroleum and Coal Products Manufacturing	500	950	950
325110	Petrochemical Manufacturing	1,000	1,300	1,300
325120	Industrial Gas Manufacturing	1,000	1,200	1,200
325130	Synthetic Dye and Pigment Manufacturing	1,000	1,050	1,050
325220	Artificial and Synthetic Fibers and Filaments Manufacturing	1,000	1,050	1,050
325311	Nitrogenous Fertilizer Manufacturing	1,000	1,050	1,050
325312	Phosphatic Fertilizer Manufacturing	750	1,350	1,350
325314	Fertilizer (Mixing Only) Manufacturing	500	550	550
325320	Pesticide and Other Agricultural Chemical Manufacturing	1,000	1,150	1,150
325412	Pharmaceutical Preparation Manufacturing	1,250	1,300	1,300
325520	Adhesive Manufacturing	500	550	550
325611	Soap and Other Detergent Manufacturing	1,000	1,100	1,100
325612	Polish and Other Sanitation Good Manufacturing	750	900	900
325613	Surface Active Agent Manufacturing	750	1,100	1,100
325910	Printing Ink Manufacturing	500	750	750
325991	Custom Compounding of Purchased Resins	500	600	600
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	500	650	650
326121	Unlaminated Plastics Profile Shape Manufacturing	500	600	600
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing.	500	650	650
326220	Rubber and Plastics Hoses and Belting Manufacturing	750	800	800
326299	All Other Rubber Product Manufacturing	500	650	650
327211	Flat Glass Manufacturing	1,000	1,100	1,100
327410	Lime Manufacturing	750	1,050	1,050
327910	Abrasive Product Manufacturing	750	900	900
327992	Ground or Treated Mineral and Earth Manufacturing	500	600	600
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.	500	750	750
331313	Alumina Refining and Primary Aluminum Production	1,000	1,300	1,300
331315	Aluminum Sheet, Plate, and Foil Manufacturing	1,250	1,400	1,400
331420	Copper Rolling, Drawing, Extruding, and Alloying	1,000	1,050	1,050
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	750	900	900
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).	750	850	850
331512	Steel Investment Foundries	1,000	1,050	1,050
331513	Steel Foundries (except Investment)	500	700	700
331523	Nonferrous Metal Die-Casting Foundries	500	700	700
331524	Aluminum Foundries (except Die-Casting)	500	550	550
332112	Nonferrous Forging	750	950	950
332114	Custom Roll Forming	500	600	600
332117	Powder Metallurgy Part Manufacturing	500	550	550
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.	750	1,000	1,000
332439	Other Metal Container Manufacturing	500	600	600
332613	Spring Manufacturing	500	600	600
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing	500	600	600

TABLE 2—ADOPTED SIZE STANDARDS REVISIONS—Continued
[NAICS 2017]

NAICS 2017 code	NAICS 2017 industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed/ adopted size standard (employees)
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.	500	600	600
332992	Small Arms Ammunition Manufacturing	1,250	1,300	1,300
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500	550	550
333131	Mining Machinery and Equipment Manufacturing	500	900	900
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing	500	550	550
333314	Optical Instrument and Lens Manufacturing	500	600	600
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.	750	900	900
333991	Power-Driven Hand Tool Manufacturing	500	950	950
333993	Packaging Machinery Manufacturing	500	600	600
333995	Fluid Power Cylinder and Actuator Manufacturing	750	800	800
333997	Scale and Balance Manufacturing	500	700	700
334290	Other Communications Equipment Manufacturing	750	800	800
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.	500	550	550
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	1,250	1,350	1,350
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.	500	650	650
334514	Totalizing Fluid Meter and Counting Device Manufacturing	750	850	850
334517	Irradiation Apparatus Manufacturing	1,000	1,200	1,200
334519	Other Measuring and Controlling Device Manufacturing	500	600	600
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	500	600	600
335129	Other Lighting Equipment Manufacturing	500	550	550
335311	Power, Distribution, and Specialty Transformer Manufacturing.	750	800	800
335912	Primary Battery Manufacturing	1,000	1,300	1,300
335931	Current-Carrying Wiring Device Manufacturing	500	600	600
335991	Carbon and Graphite Product Manufacturing	750	900	900
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing.	500	600	600
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.	1,000	1,050	1,050
336414	Guided Missile and Space Vehicle Manufacturing	1,250	1,300	1,300
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.	1,000	1,050	1,050
336611	Ship Building and Repairing	1,250	1,300	1,300
336991	Motorcycle, Bicycle, and Parts Manufacturing	1,000	1,050	1,050
337125	Household Furniture (except Wood and Metal) Manufacturing.	750	950	950
337214	Office Furniture (except Wood) Manufacturing	1,000	1,100	1,100
339113	Surgical Appliance and Supplies Manufacturing	750	800	800
339910	Jewelry and Silverware Manufacturing	500	700	700
339930	Doll, Toy, and Game Manufacturing	500	700	700
339991	Gasket, Packing, and Sealing Device Manufacturing	500	600	600
339994	Broom, Brush, and Mop Manufacturing	500	750	750
339999	All Other Miscellaneous Manufacturing	500	550	550
483111	Deep Sea Freight Transportation	500	1,050	1,050
483113	Coastal and Great Lakes Freight Transportation	750	800	800
483114	Coastal and Great Lakes Passenger Transportation	500	550	550
483211	Inland Water Freight Transportation	750	1,050	1,050
483212	Inland Water Passenger Transportation	500	550	550
511199	All Other Publishers	500	550	550
512230	Music Publishers	750	900	900
512250	Record Production and Distribution	250	900	900
541715 (Exception 3)	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts.	1,250	1,300	1,300
562910 (Exception	Environmental Remediation Services	750	1,000	1,000

Table 3, Summary of Adopted Size Standards Revisions by Sector (NAICS 2017), summarizes the adopted changes to size standards by NAICS sector.

TABLE 3—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR
[NAICS 2017]

Sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction	24	10	0	14
22	Utilities	11	10	0	1
31–33	Manufacturing	360	120	0	240
48–49	Transportation and Warehousing	15	5	0	10
51	Information	12	3	0	9
54	Professional, Scientific and Technical Services	7	1	0	6
Other Sectors	Agriculture, Forestry, Fishing and Hunting; Finance and Insurance; Administrative and Support, Waste Management and Remediation Services.	3	1	0	2
Total		432	150	0	282

Applying the Adopted Changes to the NAICS 2022 Structure

Under this final rule, SBA has reviewed the size standards for 56 NAICS 2017 industries or their parts with employee-based size standards (excluding employee-based size standards in Sectors 42 and 44–45) and one industry with a receipts-based size standard that were split, merged, or modified to become part of 36 new industries under OMB's NAICS 2022 changes. Overall, OMB's NAICS 2022 revisions created 111 new industries by reclassifying, combining, or splitting 156 NAICS 2017 industries or their parts.[6]

Prior to issuing this final rule on employee-based size standards, SBA incorporated OMB's NAICS 2022 changes into its Table of Size Standards at 13 CFR 121.201 in a final rule, effective October 1, 2022 (87 FR 59240; September 29, 2022), using the newly adopted size standards under SBA's review of size standards under the Jobs Act. Specifically, as stated above, as part of SBA's second five-year review of size standards under the Jobs Act, SBA revised all monetary-based size standards and employee-based size standards under NAICS Sectors 42 (Wholesale Trade) and 44–45 (Retail Trade).

Of the 36 new industries with employee-based size standards (excluding Sectors 42 and 44–45) that were created under the NAICS 2022 revision, 27 were formed by combining more than one NAICS 2017 industry or industry part, often with new 6-digit codes and industry titles. Three new industries were formed by changing the 6-digit code without changing the industry title, two industries were formed by changing the title without changing the 6-digit code, and four remaining industries had either their content, definition, or content changed, usually involving parts of NAICS 2017 industries.

SBA's methodology for incorporating OMB's NAICS revisions into size standards is generally well-established. On October 22, 1999, SBA proposed to replace the Standard Industrial Classification (SIC) System with NAICS 1997 as the basis of industry definitions for its table of small business size standards (64 FR 57188). The proposed rule included a set of guidelines or rules that SBA applied to convert the size standards for industries under SIC to industries under NAICS. The guidelines primarily aimed to minimize the impact of applying a new industry classification system on SBA's size standards and on small businesses that qualified as small under the SIC-based size standards. SBA received no negative comments against the proposed guidelines. Thus, SBA published its final rule on May 15, 2000 (65 FR 30386), corrected on September 5, 2000 (65 FR 53533), adopting the resulting table of size standards based on NAICS 1997 structure, as proposed. To be consistent, SBA generally applied the same guidelines when it updated its table of size standards to adopt NAICS 2002, NAICS 2007, NAICS 2012, NAICS 2017, and NAICS 2022 revisions. In those updates as well, SBA received no adverse comments against using those guidelines, or against the resulting changes to the size standards. These guidelines to adopt OMB's NAICS revisions were also included in the SBA's ''Size Standards Methodology'' white paper and SBA received no adverse comments when the revised methodology was open for public comments. The applicable guidelines are shown below in Table 4, ''General Guidelines to Establish Size Standards for New Industries under NAICS 2022.''

TABLE 4—GENERAL GUIDELINES TO ESTABLISH SIZE STANDARDS FOR NEW INDUSTRIES UNDER NAICS 2022

If the NAICS 2022 industry is composed of:	The size standard for the NAICS 2022 industry code will be:
1. A single NAICS 2012 industry or part of a single NAICS 2012 industry.	The same size standard as for the NAICS 2012 industry or part.
2. Two or more NAICS 2017 industries; two or more parts of an NAICS 2017 industry; parts of two or more NAICS 2017 industries; or one or more NAICS 2017 industries and part(s) of one or more NAICS 2017 industries, and	
2a. they all have the same size standard	The same size standard as for the NAICS 2017 industries or parts.

[6] Complete information on the relationship between NAICS 2017 and NAICS 2022 is available on the U.S. Bureau of the Census (Census Bureau) website at *https://www.census.gov/naics/*. The Census Bureau's website also provides detailed documentation on Federal notices involving the replacement of SIC with NAICS, and all subsequent NAICS updates and revisions, including both the July 2, 2021, and December 21, 2021, Federal notices regarding the NAICS 2022 revision.

TABLE 4—GENERAL GUIDELINES TO ESTABLISH SIZE STANDARDS FOR NEW INDUSTRIES UNDER NAICS 2022—Continued

If the NAICS 2022 industry is composed of:	The size standard for the NAICS 2022 industry code will be:
2b. they all have the same size measure (*e.g.,* receipts, employees, *etc.*) but do not all have the same size standard.	The same size standard as for the NAICS 2017 industry or part that most closely matches the economic activity described by the NAICS 2022 industry, or The highest size standard among the NAICS 2017 industries and part(s) that comprise the NAICS 2022 industry, provided that the highest size standard does not include dominant or potentially dominant firms.
2c. they have different size measures (*i.e.,* for example, some are based on receipts and others on employees) and hence do not all have the same size standard.	The same size standard as for the NAICS 2017 industry or part that most closely matches the economic activity described by the NAICS 2022 industry, or The highest size standard among the NAICS 2017 industries and part(s) that comprise the NAICS 2022 industry, provided that the highest size standard does not include dominant or potentially dominant firms. To apply this rule, SBA converts all size standards to a single measure (*e.g.,* receipts, employees, *etc.*) using the size measure for the NAICS 2017 industry or part(s) that most closely match the economic activity described by the NAICS 2022 industry or using the size measure that applies to most of the NAICS industries or parts comprising the NAICS 2022 industry.

Thus, in this final rule, SBA is incorporating the adopted size standards, as presented in Table 2 (above), into the table of size standards based on NAICS 2022 following the guidelines prescribed in Table 4 (above).

SBA identified 56 NAICS 2017 unique industries or their parts reviewed under this final rule that became part of 37 new industries under NAICS 2022. New size standards for the 37 new NAICS 2022 industries resulted in a reduction in size standard for eight industries under NAICS 2017, an increase to size standard for 12 industries and 2 parts of one industry, change in the size standard from employees to receipts for one industry, and no change in size standards for the remaining 35 NAICS 2017 industries or their parts. Among the 37 new industries under NAICS 2022 evaluated in this final rule, compared to the size standards adopted in the September 2022 NAICS 2022 adoption final rule, size standards increased for 10 industries and remained the same for the remaining 27 industries. Table 5, Size Standards for Industries Under NAICS 2017 Matched to NAICS 2022, below, presents these results.

TABLE 5—SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2017 MATCHED TO NAICS 2022

NAICS 2022 code	NAICS 2022 industry title	Concordance with NAICS 2017 code	NAICS 2017 industry title (and specific piece of the NAICS 2017 industry that is contained in the NAICS 2022 industry)	NAICS 2017 standard prior to NAICS 2022 adoption (employees or $ million)	NAICS 2022 standard after NAICS 2022 adoption (employees or $ million)	NAICS 2017 standard adopted under this final rule (employees)	NAICS 2022 standard under this final rule (employees or $ million)
212114	Surface Coal Mining	212111	Bituminous Coal and Lignite Surface Mining.	1,250	1,250	1,250	1,250.
		212113	Anthracite Mining—*Anthracite surface mining.*	250		250	
212115	Underground Coal Mining	212112	Bituminous Coal Underground Mining.	1,500	1,500	1,500	1,500.
		212113	Anthracite Mining—*Anthracite underground mining.*	250		250	
212220	Gold Ore and Silver Ore Mining.	212221	Gold Ore Mining	1,500	1,500	1,500	1,500.
		212222	Silver Ore Mining	250		250	
212290	Other Metal Ore Mining	212291	Uranium-Radium-Vanadium Ore Mining.	250	750	250	1,250.
		212299	All Other Metal Ore Mining	750		1,250	
212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining.	212324	Kaolin and Ball Clay Mining.	750	500	750	650.
		212325	Clay and Ceramic and Refractory Minerals Mining.	500		650	
212390	Other Nonmetallic Mineral Mining and Quarrying.	212391	Potash, Soda, and Borate Mineral Mining.	750	500	1,050	600.
		212392	Phosphate Rock Mining	1,000		1,000	
		212393	Other Chemical and Fertilizer Mineral Mining.	500		600	
		212399	All Other Nonmetallic Mineral Mining.	500		600	
311221	Wet Corn Milling and Starch Manufacturing.	311221	Wet Corn Milling	1,250	1,250	1,300	1,300.
315120	Apparel Knitting Mills	315110	Hosiery and Sock Mills	750	750	750	850.
		315190	Other Apparel Knitting Mills.	750		850	

TABLE 5—SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2017 MATCHED TO NAICS 2022—Continued

NAICS 2022 code	NAICS 2022 industry title	Concordance with NAICS 2017 code	NAICS 2017 industry title (and specific piece of the NAICS 2017 industry that is contained in the NAICS 2022 industry)	NAICS 2017 standard prior to NAICS 2022 adoption (employees or $ million)	NAICS 2022 standard after NAICS 2022 adoption (employees or $ million)	NAICS 2017 standard adopted under this final rule (employees)	NAICS 2022 standard under this final rule (employees or $ million)
315250	Cut and Sew Apparel Manufacturing (except Contractors).	315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	750	750	750	750.
		315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	750		750	
		315280	Other Cut and Sew Apparel Manufacturing.	750		750	
316990	Other Leather and Allied Product Manufacturing.	316992	Women's Handbag and Purse Manufacturing.	750	500	750	500.
		316998	All Other Leather Good and Allied Product Manufacturing.	500		500	
321215	Engineered Wood Member Manufacturing.	321213	Engineered Wood Member (except Truss) Manufacturing.	750	500	750	500.
		321214	Truss Manufacturing	500		500	
322120	Paper Mills	322121	Paper (except Newsprint) Mills.	1,250	1,250	1,250	1,250.
		322122	Newsprint Mills	750		1,050	
325314	Fertilizer (Mixing Only) Manufacturing.	*325314*	Fertilizer (Mixing Only) Manufacturing—*except compost manufacturing.*	500	500	550	550.
325315	Compost Manufacturing	*325314*	Fertilizer (Mixing Only) Manufacturing—*compost manufacturing.*	500	500	550	550.
325992	Photographic Film, Paper, Plate, Chemical, and Copy Toner Manufacturing.	325992	Photographic Film, Paper, Plate, and Chemical Manufacturing.	1,500	1,500	1,500	1,500.
333248	All Other Industrial Machinery Manufacturing.	333244	Printing Machinery and Equipment Manufacturing.	750	750	750	750.
		333249	Other Industrial Machinery Manufacturing.	500		500	
333310	Commercial and Service Industry Machinery Manufacturing.	333314	Optical Instrument and Lens Manufacturing.	500	1,000	600	1,000.
		333316	Photographic and Photocopying Equipment Manufacturing.	1,000	1,000		
		333318	Other Commercial and Service Industry Machinery Manufacturing.	1,000		1,000	
333998	All Other Miscellaneous General Purpose Machinery Manufacturing.	333997	Scale and Balance Manufacturing.	500	500	700	700.
		333999	All Other Miscellaneous General Purpose Machinery Manufacturing.	500		500	
334610	Manufacturing and Reproducing Magnetic and Optical Media.	334613	Blank Magnetic and Optical Recording Media Manufacturing.	1,000	1,250	1,000	1,250.
		334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing.	1,250		1,250	
335131	Residential Electric Lighting Fixture Manufacturing.	335121	Residential Electric Lighting Fixture Manufacturing.	750	750	750	750.
335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	500	500	600	600.
335139	Electric Lamp Bulb and Other Lighting Equipment Manufacturing.	335110	Electric Lamp Bulb and Part Manufacturing.	1,250	1,250	1,250	1,250.
		335129	Other Lighting Equipment Manufacturing.	500		550	
335910	Battery Manufacturing	335911	Storage Battery Manufacturing.	1,250	1,250	1,250	1,250.
		335912	Primary Battery Manufacturing.	1,000		1,300	
336110	Automobile and Light Duty Motor Vehicle Manufacturing.	336111	Automobile Manufacturing	1,500	1,500	1,500	1,500.

TABLE 5—SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2017 MATCHED TO NAICS 2022—Continued

NAICS 2022 code	NAICS 2022 industry title	Concordance with NAICS 2017 code	NAICS 2017 industry title (and specific piece of the NAICS 2017 industry that is contained in the NAICS 2022 industry)	NAICS 2017 standard prior to NAICS 2022 adoption (employees or $ million)	NAICS 2022 standard after NAICS 2022 adoption (employees or $ million)	NAICS 2017 standard adopted under this final rule (employees)	NAICS 2022 standard under this final rule (employees or $ million)
		336112	Light Truck and Utility Vehicle Manufacturing.	1,500		1,500	
337126	Household Furniture (except Wood and Upholstered) Manufacturing.	337124	Metal Household Furniture Manufacturing.	750	750	750	950.
		337125	Household Furniture (except Wood and Metal) Manufacturing.	750		950	
513110	Newspaper Publishers	511110	Newspaper Publishers	1,000	1,000	1,000	1,000.
		519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet newspaper publishers*.	1,000		1,000	
513120	Periodical Publishers	511120	Periodical Publishers	1,000	1,000	1,000	1,000.
		519130	Internet Publishing and Broadcasting and Web Search Portals —*Internet periodical publishers*.	1,000		1,000	
513130	Book Publishers	511130	Book Publishers	1,000	1,000	1,000	1,000.
		519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet book publishers*.	1,000		1,000	
513140	Directory and Mailing List Publishers.	511140	Directory and Mailing List Publishers.	1,250	1,000	1,250	1,000.
		519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet directory and mailing list publishers*.	1,000		1,000	
513191	Greeting Card Publishers	511191	Greeting Card Publishers	1,500	1,000	1,500	1,000.
		519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet greeting card publishers*.	1,000		1,000	
513199	All Other Publishers	511199	All Other Publishers	500	1,000	550	1,000.
		519130	Internet Publishing and Broadcasting and Web Search Portals—*All other Internet publishers*.	1,000		1,000	
516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	515111	Radio Networks	$41.5 million	$41.5 million		$41.5 million.
		515120	Television Broadcasting—television networks.	$41.5 million			
		515210	Cable and Other Subscription Programming.	$41.5 million			
		519110	News Syndicates	$32.0 million			
		519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet broadcasting*.	1,000		1,000	
517111	Wired Telecommunications Carriers.	517311	Wired Telecommunications Carriers.	1,500	1,500	1,500	1,500.
517112	Wireless Telecommunications Carriers (except Satellite).	*517312*	Wireless Telecommunications Carriers (except Satellite)—*Except agents for wireless telecommunications carriers*.	1,500	1,500	1,500	1,500.
517121	Telecommunications Resellers.	*517911*	Telecommunications Resellers—*Except agents for wireless telecommunications resellers*.	1,500	1,500	1,500	1,500.
517122	Agents for Wireless Telecommunications Services.	*517312*	Wireless Telecommunications Carriers (except Satellite)—*Agents for wireless telecommunications carriers*.	1,500	1,500	1,500	1,500.
		517911	Telecommunications Resellers—*Agents for wireless telecommunications resellers*.	1,500		1,500	

TABLE 5—SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2017 MATCHED TO NAICS 2022—Continued

NAICS 2022 code	NAICS 2022 industry title	Concordance with NAICS 2017 code	NAICS 2017 industry title (and specific piece of the NAICS 2017 industry that is contained in the NAICS 2022 industry)	NAICS 2017 standard prior to NAICS 2022 adoption (employees or $ million)	NAICS 2022 standard after NAICS 2022 adoption (employees or $ million)	NAICS 2017 standard adopted under this final rule (employees)	NAICS 2022 standard under this final rule (employees or $ million)
519290	Web Search Portals and All Other Information Services.	*519130* 519190	Internet Publishing and Broadcasting and Web Search Portals—*Web search portals.* All Other Information Services.	1,000 ..... $30.0 million.	1,000	1,000	1,000.

By combining the results of Table 2 and Table 5 (above), in Table 6 (below), Adopted Size Standard Revisions (NAICS 2022), SBA presents revisions to size standards resulting from the incorporation of the adopted size standards into the NAICS 2022 structure.

TABLE 6—ADOPTED SIZE STANDARDS REVISIONS

[NAICS 2022]

2022 NAICS Code	NAICS 2022 industry title	Current size standards (employees)	Adopted size standards (employees)
212210	Iron Ore Mining	750	1,400
212230	Copper, Nickel, Lead, and Zinc Mining	750	1,400
212290	Other Metal Ore Mining	750	1,250
212313	Crushed and Broken Granite Mining and Quarrying	750	850
212319	Other Crushed and Broken Stone Mining and Quarrying	500	550
212322	Industrial Sand Mining	500	750
212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining	500	650
212390	Other Nonmetallic Mineral Mining and Quarrying	500	600
221111	Hydroelectric Power Generation	500	750
221112	Fossil Fuel Electric Power Generation	750	950
221113	Nuclear Electric Power Generation	750	1,150
221114	Solar Electric Power Generation	250	500
221115	Wind Electric Power Generation	250	1,150
221117	Biomass Electric Power Generation	250	550
221118	Other Electric Power Generation	250	650
221121	Electric Bulk Power Transmission and Control	500	950
221122	Electric Power Distribution	1,000	1,100
221210	Natural Gas Distribution	1,000	1,150
311111	Dog and Cat Food Manufacturing	1,000	1,250
311119	Other Animal Food Manufacturing	500	650
311211	Flour Milling	1,000	1,050
311212	Rice Milling	500	750
311221	Wet Corn Milling and Starch Manufacturing	1,250	1,300
311224	Soybean and Other Oilseed Processing	1,000	1,250
311225	Fats and Oils Refining and Blending	1,000	1,100
311230	Breakfast Cereal Manufacturing	1,000	1,300
311313	Beet Sugar Manufacturing	750	1,150
311314	Cane Sugar Manufacturing	1,000	1,050
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	1,000	1,100
311422	Specialty Canning	1,250	1,400
311511	Fluid Milk Manufacturing	1,000	1,150
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	750	1,000
311611	Animal (except Poultry) Slaughtering	1,000	1,150
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour	750	850
311920	Coffee and Tea Manufacturing	750	1,000
311930	Flavoring Syrup and Concentrate Manufacturing	1,000	1,100
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing	750	850
311942	Spice and Extract Manufacturing	500	650
311991	Perishable Prepared Food Manufacturing	500	700
311999	All Other Miscellaneous Food Manufacturing	500	700
312111	Soft Drink Manufacturing	1,250	1,400
312112	Bottled Water Manufacturing	1,000	1,100
312140	Distilleries	1,000	1,100
313220	Narrow Fabric Mills and Schiffli Machine Embroidery	500	550
313230	Nonwoven Fabric Mills	750	850
314999	All Other Miscellaneous Textile Product Mills	500	550
315120	Apparel Knitting Mills	750	850
315990	Apparel Accessories and Other Apparel Manufacturing	500	600
316110	Leather and Hide Tanning and Finishing	500	800

TABLE 6—ADOPTED SIZE STANDARDS REVISIONS—Continued

[NAICS 2022]

2022 NAICS Code	NAICS 2022 industry title	Current size standards (employees)	Adopted size standards (employees)
321113	Sawmills	500	550
321114	Wood Preservation	500	550
321211	Hardwood Veneer and Plywood Manufacturing	500	600
322110	Pulp Mills	750	1,050
323111	Commercial Printing (except Screen and Books)	500	650
323120	Support Activities for Printing	500	550
324122	Asphalt Shingle and Coating Materials Manufacturing	750	1,100
324191	Petroleum Lubricating Oil and Grease Manufacturing	750	900
324199	All Other Petroleum and Coal Products Manufacturing	500	950
325110	Petrochemical Manufacturing	1,000	1,300
325120	Industrial Gas Manufacturing	1,000	1,200
325130	Synthetic Dye and Pigment Manufacturing	1,000	1,050
325220	Artificial and Synthetic Fibers and Filaments Manufacturing	1,000	1,050
325311	Nitrogenous Fertilizer Manufacturing	1,000	1,050
325312	Phosphatic Fertilizer Manufacturing	750	1,350
325314	Fertilizer (Mixing Only) Manufacturing	500	550
325315	Compost Manufacturing	500	550
325320	Pesticide and Other Agricultural Chemical Manufacturing	1,000	1,150
325412	Pharmaceutical Preparation Manufacturing	1,250	1,300
325520	Adhesive Manufacturing	500	550
325611	Soap and Other Detergent Manufacturing	1,000	1,100
325612	Polish and Other Sanitation Good Manufacturing	750	900
325613	Surface Active Agent Manufacturing	750	1,100
325910	Printing Ink Manufacturing	500	750
325991	Custom Compounding of Purchased Resins	500	600
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500	650
326121	Unlaminated Plastics Profile Shape Manufacturing	500	600
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing	500	650
326220	Rubber and Plastics Hoses and Belting Manufacturing	750	800
326299	All Other Rubber Product Manufacturing	500	650
327211	Flat Glass Manufacturing	1,000	1,100
327410	Lime Manufacturing	750	1,050
327910	Abrasive Product Manufacturing	750	900
327992	Ground or Treated Mineral and Earth Manufacturing	500	600
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	500	750
331313	Alumina Refining and Primary Aluminum Production	1,000	1,300
331315	Aluminum Sheet, Plate, and Foil Manufacturing	1,250	1,400
331420	Copper Rolling, Drawing, Extruding, and Alloying	1,000	1,050
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding	750	900
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).	750	850
331512	Steel Investment Foundries	1,000	1,050
331513	Steel Foundries (except Investment)	500	700
331523	Nonferrous Metal Die-Casting Foundries	500	700
331524	Aluminum Foundries (except Die-Casting)	500	550
332112	Nonferrous Forging	750	950
332114	Custom Roll Forming	500	600
332117	Powder Metallurgy Part Manufacturing	500	550
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.	750	1,000
332439	Other Metal Container Manufacturing	500	600
332613	Spring Manufacturing	500	600
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing	500	600
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.	500	600
332992	Small Arms Ammunition Manufacturing	1,250	1,300
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500	550
333131	Mining Machinery and Equipment Manufacturing	500	900
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing	500	550
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing	750	900
333991	Power-Driven Hand Tool Manufacturing	500	950
333993	Packaging Machinery Manufacturing	500	600
333995	Fluid Power Cylinder and Actuator Manufacturing	750	800
333998	All Other Miscellaneous General Purpose Machinery Manufacturing	500	700
334290	Other Communications Equipment Manufacturing	750	800
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing	500	550
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	1,250	1,350

TABLE 6—ADOPTED SIZE STANDARDS REVISIONS—Continued

[NAICS 2022]

2022 NAICS Code	NAICS 2022 industry title	Current size standards (employees)	Adopted size standards (employees)
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.	500	650
334514	Totalizing Fluid Meter and Counting Device Manufacturing	750	850
334517	Irradiation Apparatus Manufacturing	1,000	1,200
334519	Other Measuring and Controlling Device Manufacturing	500	600
335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing	500	600
335311	Power, Distribution, and Specialty Transformer Manufacturing	750	800
335931	Current-Carrying Wiring Device Manufacturing	500	600
335991	Carbon and Graphite Product Manufacturing	750	900
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	500	600
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing	1,000	1,050
336414	Guided Missile and Space Vehicle Manufacturing	1,250	1,300
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	1,000	1,050
336611	Ship Building and Repairing	1,250	1,300
336991	Motorcycle, Bicycle, and Parts Manufacturing	1,000	1,050
337126	Household Furniture (except Wood and Upholstered) Manufacturing	750	950
337214	Office Furniture (except Wood) Manufacturing	1,000	1,100
339113	Surgical Appliance and Supplies Manufacturing	750	800
339910	Jewelry and Silverware Manufacturing	500	700
339930	Doll, Toy, and Game Manufacturing	500	700
339991	Gasket, Packing, and Sealing Device Manufacturing	500	600
339994	Broom, Brush, and Mop Manufacturing	500	750
339999	All Other Miscellaneous Manufacturing	500	550
483111	Deep Sea Freight Transportation	500	1,050
483113	Coastal and Great Lakes Freight Transportation	750	800
483114	Coastal and Great Lakes Passenger Transportation	500	550
483211	Inland Water Freight Transportation	750	1,050
483212	Inland Water Passenger Transportation	500	550
512230	Music Publishers	750	900
512250	Record Production and Distribution	250	900
541715 (Exception 3)	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts	1,250	1,300
562910 (Exception)	Environmental Remediation Services	750	1,000

Table 7, Summary of Adopted Size Standards Revisions by Sector (NAICS 2022), summarizes the adopted changes to size standards in this final rule by NAICS sector. Accordingly, of 412 NAICS 2022 employee-based size standards reviewed in this rule, SBA is increasing 144, including 117 in Sector 31–33, ten in Sector 22, eight in Sector 21, five in Sector 48–49, two in Sector 51, and one each in Sector 54 and Sector 56. SBA is retaining the remaining 268 employee-based size standards in those sectors, including 204 size standards that would decrease based on analytical results. In the April 2022 proposed rule as well as other rulemakings as part of the second five-year review of size standards, in response to the impact of the COVID–19 pandemic, SBA maintained current size standards where the analytical results supported decreases. SBA is also retaining the remaining 64 size standards for which the results suggested no changes.

TABLE 7—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS BY SECTOR

[NAICS 2022]

NAICS sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction	17	8	0	9
22	Utilities	11	10	0	1
31–33	Manufacturing	346	117	0	229
48–49	Transportation and Warehousing	15	5	0	10
51	Information	13	2	0	11
54	Professional, Scientific and Technical Services	7	1	0	6
Other Sectors	Agriculture, Forestry, Fishing and Hunting; Finance and Insurance; Administrative and Support, Waste Management and Remediation Services.	3	1	0	2
Total		412	144	0	268

Evaluation of Dominance in Field of Operation

SBA determined that for the industries evaluated under this final rule, no individual firm at or below the revised size standards in Table 6 (above) would be large enough to dominate its field of operation. At the size standard levels adopted in this final rule, based on 2017 Economic Census, an individual firm's share of total industry receipts among those industries would be, on average, 2.3 percent, varying from 0.1 percent to 21.4 percent. Generally, SBA believes the shares below 40 percent would preclude dominant firms from qualifying as small and exerting control on any industry. Thus, the above market shares effectively preclude a firm at or below the revised size standards from exerting control on any of the industries.

Alternatives Considered

In response to the unprecedented economic impacts of the COVID–19 pandemic on small businesses and government response, SBA is adopting increases to size standards where the data suggests increases are warranted; and retaining all current size standards where the data suggested lowering is appropriate. SBA is also retaining all current size standards where the data suggested no changes to the current size standards.

Nonetheless, SBA considered two other alternatives. Alternative Option One was to adopt changes to size standards exactly as suggested by the analytical results. In other words, Alternative Option One would entail increasing size standards for 144 industries or subindustries, decreasing size standards for 204 industries or subindustries, and retaining size standards at their current levels for 64 industries or subindustries. Alternative Option Two was to retain all current size standards.

SBA is not adopting Alternative Option One because it would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. Impacts of lowering size standards under Alternative Option One are discussed in detail in the Regulatory Impact Analysis section of this rule. Lowering size standards in the current environment would also run counter to various measures the Federal Government has implemented to help small businesses and the overall economy recover from the ongoing COVID–19 pandemic. Given the effects of the 2007–2009 Great Recession, and the resulting government actions to support small businesses and the overall economy, SBA also adopted a policy of not decreasing size standards during the first five-year review of size standards, even though the data supported decreases.

Under Alternative Option Two, given the current COVID–19 pandemic, SBA considered retaining the current levels of all size standards even though the analysis of relevant data suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two because results discussed in the Regulatory Impact Analysis section, below, show that retaining all size standards at their current levels would cause otherwise qualified small businesses to forgo various small business benefits becoming available to them under the option of increasing 144 and retaining 268 employee-based size standards. Such benefits would include access to Federal contracts set aside for small businesses and capital through SBA's loan and SBIC programs, and exemptions from paperwork and other compliance requirements.

Federal Procurement Size Standard for Nonmanufacturers

In the April 2022 proposed rule, SBA proposed to maintain the 500-employee size standard for nonmanufacturers. Based on the evaluation of public comments pertaining to SBA's proposed size standard, its analyses of industry factors using the latest available data when the proposed rule was prepared, and SBA's considerations of other factors outlined in the proposed rule as well as public comments discussed above, in this final rule, SBA is adopting 500 employees as the size standard applicable to nonmanufacturers under 13 CFR 121.406 as proposed in the April 26, 2022, proposed rule.

Compliance With Executive Orders 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 this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this final rule, including (1) A statement of the need for the regulatory action, (2) An examination of alternative regulatory approaches, and (3) An estimate of the benefits and costs—both quantitative and qualitative—of the regulatory action and the alternatives considered.

Regulatory Impact Analysis

1. What is the need for this regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small. Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or ''size standards'') and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This final rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that the size standards revisions adopted for industries being reviewed in this final rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in Federal marketplace.

The revisions to the existing size standards for 144 industries or subindustries (or ''exceptions''), including 117 industries in Sector 31–33 and 27 industries and subindustries in other sectors are consistent with SBA's statutory mandate to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action

promotes the Administration's goals and objectives as well as meets the SBA's statutory responsibility. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries are able to access Federal small business programs that are designed to assist them to become competitive and create jobs.

2. What are the potential benefits and costs of this regulatory action?

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.,* making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of regulatory changes and their alternatives.

Changes to Size Standards

Based on the results from the analyses of the latest industry and Federal contracting data, evaluation of the public comments on the proposed rule, as well as consideration of the impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 emergency on small businesses and the overall economic activity, of the total of 412 industries and subindustries (or ''exceptions'') in Sector 31–33 and other sectors that have employee-based size standards, SBA increases size standards for 144 industries or subindustries (''exceptions'') and maintain current size standards for the remaining 268 industries or subindustries (''exceptions'').

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 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, of a total of about 333,213 businesses in industries in Sectors 31–33 and other sectors with employee-based size standards, 96.8 percent are considered small under the current size standards. That percentage varies from 88.0 percent in NAICS Sector 22 to 99.8 percent in Sector 11. Based on the data from FPDS–NG for fiscal years 2018–2020, about 41,838 unique firms in those industries received at least one Federal contract during that period, of which 84.3 percent were small under the current size standards. A total of $231.6 billion in average annual contract dollars were awarded to businesses in those industries during the period of evaluation, and 18.6 percent of the dollars awarded went to small businesses. For industries and subindustries (''exceptions'') reviewed in this final rule, providing contract dollars to small business through set-asides is quite important. From the total small business contract dollars awarded during the period considered, 47.1 percent were awarded through various small business set-aside programs and 52.9 percent were awarded through non-set aside contracts. 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 4,877 7(a) and 504 loans in that period, totaling about $3.1 billion, of which 75.8 percent was issued through the 7(a) program and 24.2 percent was issued through the 504/CDC program. During fiscal years 2018–2020, small businesses in those industries also received 255 loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about $11.4 million on an annual basis.[7] Table 8, Baseline for All Industries (NAICS 2022), below, provides these baseline results for Manufacturing (Sector 31–33) and all other sectors.

TABLE 8—BASELINE FOR ALL INDUSTRIES

[NAICS 2022]

	Sector 31–33	Other sectors	Total
Number of industries or subindustries (''exceptions'') reviewed in this proposed rule	346	66	412
Total firms in industries reviewed in this proposed rule (2017 Economic Census) [1]	259,377	73,836	333,213
Total small firms in those industries under current size standards (2017 Economic Census [1]	250,804	71,813	322,617
Small firms as % of total firms (2017 Economic Census) [1]	96.7%	97.3%	96.8%
Total contract dollars ($ million) (FPDS–NG FY 2018–2020)	$181,818	$49,758	$231,576
Total small business contract dollars under current standards ($ million) (FPDS–NG FY2018–2020)	$28,713	$14,364	$43,078
Small business dollars as % of total dollars (FPDS–NG FY 2018–2020)	15.8%	28.9%	18.6%
Total number of unique firms getting federal contracts (FPDS–NG FY 2018–2020)	34,225	9,312	41,838
Total number of unique small firms getting small business contracts (FPDS–NG FY 2018–2020)	29,056	7,291	35,268
Small firms getting federal contracts as % of total firms getting federal contracts (FPDS–NG FY 2018–2020)	84.9%	78.3%	84.3%
Number of 7(a) and CDC/504 loans (FY 2018–2020)	4,362	515	4,877
Amount of 7(a) and CDC/504 loans ($ million) (FY 2018–2020)	$2,863	$248	$3,111
Number of EIDL loans (FY 2018–2020) [2]	202	53	255

[7] 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 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 8—BASELINE FOR ALL INDUSTRIES—Continued
[NAICS 2022]

	Sector 31–33	Other sectors	Total
Amount of EIDL loans ($million) (FY 2018–2020) [2]	$8.3	$3.1	$11.4

[1] These figures do not include two 6-digit NAICS industries and 5 subindustries or ''exceptions'' for which Economic Census data is not available.
[2] 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.

Increases to Size Standards

As stated above, in terms of NAICS 2022, of 412 employee-based size standards in Sectors 31–33 and other sectors that are reviewed in this rule, based on the results from analyses of latest industry and Federal market data as well as impacts of size standards changes on small businesses and considerations for the impacts from the COVID–19 pandemic, SBA increases 144 size standards, including 117 in Sector 31–33 and 27 in other sectors. Below are descriptions of the benefits, costs, and transfer impacts of these increases to size standards.

Benefits of Increases to Size Standards

The most significant benefit to businesses from increases to size standards is gaining eligibility for Federal small business assistance programs or retaining that eligibility for a longer period. These include SBA's business loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a)/Business Development (BD) Program, the Historically Underutilized Business Zones (HUBZone) Program, the Women-Owned Small Businesses (WOSB) Program, the Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) Program, and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) Program.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2017 Economic Census, SBA estimates that in 144 industries or subindustries (''exceptions'') in NAICS Sector 31–33 and other sectors with employee-based size standards for which it is increasing size standards, 242 firms (see Table 9, Impacts of Increasing Size Standards, below), not small under the current size standards, will become small under the adopted size standards increases and therefore become eligible for these programs. That represents about 0.3 percent of all firms classified as small under the current size standards in industries for which SBA is adopting increases to size standards. SBA's revised size standards would result in an increase to the small business share of total receipts in those industries from 27.4 percent to 29.3 percent.

With more businesses qualifying as small under the adopted increases to size standards, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that 109 firms that are active in Federal contracting in those industries would gain small business status under the adopted size standards. Based on the same data, SBA estimates that those newly-qualified small businesses under the higher size standards, if adopted, could receive Federal small business contracts totaling $256.6 million annually. That represents a 2.4 percent increase to small business contract dollars from the baseline. Table 9 provides these results by NAICS sector.

The added competition from more businesses qualifying as small can result in lower prices to the Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could 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 proposed increases to 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 cost savings as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms 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.

As shown in Table 9, under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates that there will be no impact to the number of firms receiving 7(a) and 504 loans.

TABLE 9—IMPACTS OF INCREASING SIZE STANDARDS

	Sector 31–33	Other sectors	Total
Number of industries or subindustries (''exceptions'') with proposed increases to size standards	117	27	144
Total current small businesses in industries with proposed increases to size standards (2017 Economic Census) [1]	66,066	5,252	71,318
Additional firms qualifying as small under proposed increases to size standards (2017 Economic Census) [1]	197	45	242
% of additional firms qualifying as small relative to current small businesses in industries with proposed increases to size standards (2017 Economic Census) [1]	0.3%	0.9%	0.3%

TABLE 9—IMPACTS OF INCREASING SIZE STANDARDS—Continued

	Sector 31–33	Other sectors	Total
Number of current unique small firms getting small business contracts in industries with proposed increases to size standards (FPDS–NG FY 2018–2020) [2]	13,854	603	14,320
Additional number of small business firms gaining small business status under proposed increases to size standards (FPDS–NG FY 2018–2020)	89	22	109
% increase to number of small businesses relative to current unique small firms getting small business contracts in industries with proposed increases to size standards (FPDS–NG FY 2018–2020)	0.6%	3.6%	0.8%
Total small business contract dollars under current size standards in industries or subindustries with proposed increases to size standards ($ million) (FPDS–NG FY 2018–2020)	$9,617	$1,032	$10,648
Estimated small business dollars available to newly-qualified small firms ($ million) (FPDS–NG FY 2018–2020) [3]	$75.9	$180.6	$256.6
% increase to small business dollars relative to total small business contract dollars under current standards in industries with proposed increases to size standards	0.8%	17.5%	2.4%
Total number of 7(a) and 504 loans to small business in industries with proposed increases to size standards (FY 2018–2020)	1,120	44	1,164
Total amount of 7(a) and 504 loans to small businesses in industries with proposed increases to size standards ($ million) (FY 2018–2020)	$751	$30	$781
Estimated number of 7(a) and 504 loans to newly-qualified small firms	0	0	0
Estimated 7(a) and 504 loan amount to newly-qualified small firms ($ million)	$0.0	$0.0	$0.0
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with proposed increases to size standards	0.0%	0.0%	0.0%
Total number of EIDL loans to small businesses in industries with proposed increases to size standards (FY 2018–2020) [4]	65	10	75
Total amount of EIDL loans to small businesses in industries with proposed increases to size standards ($ million) (FY 2018–2020) [4]	$2.9	$0.7	$3.5
Estimated no. of EIDL loans to newly-qualified small firms [4]	0	0	0
Estimated EIDL loan amount to newly-qualified small firms ($ million) [4]	$0.0	$0.0	$0.0
% increase to EIDL loan amount relative to the total amount of disaster loans in industries with proposed increases to size standards [4]	0.0%	0.0%	0.0%

[1] These figures do not include two 6-digit NAICS industries and 5 subindustries or ''exceptions'' for which Economic Census data is not available.

[2] Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.

[3] Additional dollars are calculated multiplying average small business dollars obligated per unique firm times change in number of firms. Numbers of firms are calculated using the SBA's current size standards, not the contracting officer's size designation.

[4] 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.

Newly-qualified small businesses may also benefit from the SBA's EIDL program. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a precise estimate of this impact. However, based on the disaster loan program data for fiscal years 2018–2020, SBA estimates that, on an annual basis, the newly-defined small businesses under the adopted increases to size standards would not be impacted by SBA's changes to size standards.

Additionally, the newly-defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

Costs of Increases to Size Standards

Besides having to register in the System of 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 as a result of the adopted increases to 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 impacted businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. More importantly, this final rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly-qualified small businesses could become active in Federal procurement, the adopted increases to size standards may entail some additional administrative costs to the Federal Government as a result of more businesses qualifying as small for Federal small business programs. For example, there will be more firms seeking SBA's loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov,* more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA's 8(a)/BD mentor-protégé programs. With an expanded pool of small businesses, it is likely that Federal agencies would set aside more contracts for small businesses under the increases to size standards. 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 the number of size protests processed shows that the number of size protests decreased following the increases to size standards as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of FY 2013), as compared to about 500 during fiscal years 2018–2020 when size standard increases were in effect. That represents a 17 percent decline.

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 adopted increases to size standards, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using a full and open competition. 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 adopted size standards. However, the 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 adopted increases to size standards, HUBZone firms might end up getting 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.

Transfer Impacts of Increases to Size Standards

The adopted increases to 144 employee-based size standards 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 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 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 adopted increases to size standards, some unrestricted Federal contracts which 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 adopted size standards. This impact may be offset by a greater number of procurements being set aside for all small businesses. With larger businesses qualifying as small under the higher 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.

3. What alternatives have been considered?

Under OMB Circular A–4, SBA is required to consider regulatory alternatives to the adopted changes in this final rule. In this section, SBA describes and analyzes two such alternatives. Alternative Option One to the final rule, a more stringent alternative to the adopted change, would propose adopting size standards based solely on the analytical results. In other words, the size standards of 144 industries or subindustries (or ''exceptions'') for which the analytical results, as presented in Table 4 of the April 2022 proposed rule, suggested raising size standards would be raised. However, the size standards of 204 industries for which the analytical results suggest lowering size standards would be lowered. For the 64 remaining industries or subindustries for which the results suggested no changes, size standards would be maintained at their current levels. Alternative Option Two would propose retaining existing size standards for all industries, given the uncertainty generated by the ongoing COVID–19 pandemic. Below, SBA discusses benefits, costs and net impacts of each option.

Alternative Option One: Adopting All Calculated Size Standards

As discussed in the Alternatives Considered section of this final rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. These consequences could be mitigated. For example, in response to the 2008 Financial Crisis and economic conditions that followed, SBA adopted a general policy in the first five-year review of size standards to not lower any size standard (except to exclude one or more dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID–19 pandemic and the measures taken to protect public health, SBA has decided to adopt the same general policy of not lowering size standards in the ongoing second five-year review of size standards review as well.

The primary benefits of adopting Alternative Option One would include: (1) SBA's procurement, management, technical and financial assistance resources would be targeted to their intended beneficiaries according to the analytical results; (2) Adopting the size standards based on the analytical results would also promote consistency and predictability of SBA's implementation of its authority to set or adjust size standards; and (3) Firms who would remain small would face less competition from larger small firms for the remaining set aside opportunities. In the proposed rule, SBA sought comments on the impact of adopting size standards based on the analytical results.

As explained in the ''Size Standards Methodology'' white paper, in addition to adopting all results of the analysis of the primary factors, SBA evaluates other relevant factors as needed such as the impact of the reductions or increases of size standards on the distribution of contracts awarded to small businesses and may adopt different results with the intention of mitigating potential negative impacts.

We have already discussed the benefits, costs and transfer impacts of increasing 144 and retaining 268 size standards. Below we discuss the benefits, costs, and transfer impacts of increasing 144, decreasing 204, and retaining 64 size standards based on the analytical results.

Benefits of Decreases to Size Standards

The most significant benefit to businesses from decreases to size standards when SBA's analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and Federal market trends and that Federal small business assistance is more effectively targeted to

its intended beneficiaries. These include SBA's loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's business development programs, such as small business, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. The adoption of smaller size standards when the results support them diminishes the risk of awarding contracts to firms which are not small anymore.

Decreasing size standards may reduce the administrative costs of the Government, because the risk of awarding set aside contracts to other than small businesses may diminish when the size standards reflect better the structure of the market. This may also reduce the risks of providing SBA's loans to firms that are not needing them the most or of allowing firms that are not eligible for small business set-asides to participate on the SBA procurement programs, which might provide a better chance for smaller firms to grow and benefit from the opportunities available on the Federal market and strengthen the small business industrial base for the Federal Government.

Costs of Decreases to Size Standards

Table 10, Impacts of Decreases to Size Standards Under Alternative Option One, shows the various impacts of lowering size standards in 204 industries based solely on the analytical results. Based on the 2017 Economic Census, about 658 (0.3%) firms would lose their small business status under Alternative Option One. Similarly, based on the FPDS–NG data for fiscal years 2018–2020, 172 (0.7%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts. With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of small businesses from which to draw for their small business procurement programs. For example, in Alternative Option One, during fiscal years 2018–2020, agencies awarded, on an annual basis, about $28.3 billion in small business contracts in those 204 industries for which this option considered decreasing size standards. Table 10 shows that lowering size standards in 204 industries would reduce Federal contract dollars awarded to small businesses by $248 million or about 0.9 percent relative to the baseline level. Because of the importance of these industries for the Federal procurement, SBA may adopt mitigating measures to reduce the negative impact. SBA could take one or more of the following three actions: (1) Accept decreases in size standards as suggested by the analytical results; (2) Decrease size standards by a smaller amount than the calculated threshold; or (3). Retain the size standards at their current levels.

TABLE 10—IMPACTS OF DECREASES TO SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE

	Sector 31–33	Other sectors	Total
Number of industries for which SBA considered decreasing size standards	180	24	204
Total current small businesses in industries for which SBA considered decreasing size standards (2017 Economic Census)	163,803	43,056	206,856
Estimated number of firms losing small status in industries for which SBA considered decreasing size standards (2017 Economic Census)	572	86	658
% of firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards (2017 Economic Census)	0.4%	0.2%	0.3%
Number of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) [1]	19,687	5,731	24,839
Estimated number of small business firms that would have lost small business status in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) [1]	132	50	172
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) [1]	0.7%	0.9%	0.7%
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards ($ million) (FPDS–NG FY 2018–2020)	$15,325	12,932	$28,256
Estimated small business dollars not available to firms losing small business status in industries for which SBA considered decreasing size standards ($ million) (FPDS–NG FY 2018–2020) [2]	$128.6	$119.5	$248.0
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards	0.8%	0.9%	0.9%
Total number of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020)	2,875	325	3,200
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY 2018–2020)	$1,851	$147	$1,999
Estimated number of 7(a) and 504 loans not available to firms that would have lost small business status in industries for which SBA considered decreasing size standards	1	0	1
Estimated 7(a) and 504 loan amount not available to firms that would have lost small status ($ million)	$0.2	$0.0	$0.2
% decrease to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards	0.0%	0.0%	0.0%
Total number of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) [3]	115	17	132
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY 2018–2020) [3]	$4.1	$1.1	$5.2
Estimated number of EIDL loans not available to firms that would have lost small business status in industries for which SBA considered decreasing size standards [3]	0	$0.0	0
Estimated EIDL loan amount not available to firms that would have lost small business status ($ million) [3]	$0.0	$0.0	$0.0
% decrease to EIDL loan amount relative to the baseline [3]	0.0%	0.0%	0.0%

[1] Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.

[2] Additional dollars are calculated multiplying average small business dollars obligated per unique small firm times change in number of firms. Numbers of firms are calculated using the SBA's current size standards, 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.

Nevertheless, since Federal agencies are still required to meet the statutory small business contracting goal of 23 percent, actual impacts on the overall set-aside activity are likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards so that they could meet their small business contracting goals.

With fewer businesses qualifying as small, the decreased competition can also result in higher prices to the Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Lowering size standards may cause current small business contract or option holders to lose their small business status, thereby making those dollars unavailable to count toward the agencies' small business procurement goals. Additionally, impacted small businesses will be unable to compete for upcoming options as small businesses.

As shown in Table 10, decreases to size standards would have a very minor impact on small businesses applying for SBA's 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the current or calculated size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that about one of SBA's 7(a) and 504 loans with total amounts of $0.2 million could not be made to those small businesses that would lose eligibility under the calculated size standards. That represents about 0.01 percent decrease to the loan amount compared to the baseline. However, the actual impact on businesses seeking SBA's loans could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could still qualify for SBA's 7(a) and CDC/504 loans under the tangible net worth and net income-based alternative size standard.

Businesses losing small business status would also be impacted in terms of access to loans through the SBA's EIDL program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2018–2020. Additionally, all those businesses were below the calculated size standards. Since this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a precise estimate of this impact. However, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, no small businesses would lose eligibility under the calculated size standards (see Table 10).

Small businesses becoming other than small if size standards were decreased might lose benefits 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. However, if agencies determine that SBA's size standards do not adequately serve such purposes, they can establish a different size standard with an approval from SBA if they are required to use SBA's size standards for their programs.

Transfer Impacts of Decreases to Size Standards

If the size standards were decreased under alternative option one, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the adopted increases to size standards, it would have no impact on the overall economic activity since the total Federal contract dollars available for businesses to compete for will stay the same. While SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from contract redistribution resulting from decreases to size standards, it can identify several probable impacts. With a smaller pool of small businesses under the decreases to size standards, some set-aside Federal contracts to be otherwise awarded to small businesses may be competed on an unrestricted basis. As a result, large businesses may have more Federal contracting opportunities. However, because agencies are still required by law to award 23 percent of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer businesses qualifying as small under the decreases to size standards. With some larger small businesses losing small business status under the decreases to size standards, smaller small businesses would likely become more competitive in obtaining set-aside contracts. However, SBA cannot quantify these impacts.

Net Impact of Alternative Option One

To estimate the net impacts of Alternative Option One, SBA followed the same methodology used to evaluate the impacts increasing size standards (see Table 9). However, under Alternative Option One, SBA used the calculated size standards instead of the adopted increases to determine the impacts of changes to current thresholds. The impact of increases to size standards were shown in Table 9 (above). Table 10 (above) and Table 11, Net Impacts of Size Standards Changes under Alternative Option One, below, present the impact of the decreases of size standards and the net impact of adopting the calculated results under alternative option one, respectively. Net impacts are generally obtained by subtracting impacts of decreases to size standards in Table 10 from impacts of increases to size standards in Table 9.

Based on the 2017 Economic Census (the latest available when the proposed rule was developed), SBA estimates that in 349 industries and subindustries (''exceptions'') reviewed in this final rule for which the analytical results suggested to change size standards, about 415 firms (see Table 11), would become other than small under Alternative Option One. That represents about 0.2 percent of all firms classified as small under the current size standards.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 83 unique active firms in Federal contracting in those industries would lose their small business status under alternative option one, most of them from Sector 31–33. This represents a decrease of about 0.3 percent of the total number of small businesses participating in Federal contracting under the current size standards. Based on the same data, SBA estimates that about $8.6 million of Federal procurement dollars would become available to all small firms, including those gaining small status. This represents an increase of 0.02 percent from the baseline. SBA estimates that the dollars obligated to small businesses

will increase despite a reduction in the total number of small firms because the contract dollars to newly qualified small businesses in sectors other than manufacturing with increases to size standards is higher than the contract dollars to small businesses losing small business status in sectors other than manufacturing with decreases to size standards.

Based on the SBA's loan data for fiscal years 2018–2020, the total number of 7(a) and 504 loans may decrease by about one loan, and the loan amount by about $0.2 million. This represents a 0.01 percent decrease of the loan amount relative to the baseline.

Firms' participation under the SBA's EIDL program may be affected as well. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the disaster loan program data for fiscal years 2018–2020, SBA estimates that the total number of EIDL loans will not be impacted.

TABLE 11—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 31–33	Other sectors	Total
Number of industries or subindustries (''exceptions'') with changes to size standards	299	50	349
Total number of small firms under the current size standards in industries with changes to size standards (2017 Economic Census) [1]	229,933	48,322	278,255
Additional number of firms qualifying as small under size standards changes (2017 Economic Census) [1]	−375	−40	−415
% of additional firms qualifying as small relative to total current small firms (2017 Economic Census) [1]	−0.2%	−0.1%	−0.2%
Number of current unique small firms getting small business contracts in industries with changes to size standards (FPDS–NG FY 2018–2020)	26,771	6,295	32,164
Additional number of unique small firms gaining small business status in industries with changes to size standards (FPDS–NG FY 2018–2020) [2]	−59	−29	−83
% increase to small firms relative to current unique small firms gaining small business status (FPDS–NG FY 2018–2020)	−0.2%	−0.5%	−0.3%
Total small business contract dollars under current size standards in industries with changes to size standards ($ million) (FPDS–NG FY 2018–2020)	$24,942	$13,962	$38,904
Estimated small business dollars available to newly-qualified small firms ($ million) FPDS–NG FY 2018–2020)	−$52.6	$61.20	$8.6
% increase to dollars relative to total small business contract dollars under current size standards	−0.2%	0.4%	0.02%
Total number of 7(a) and 504 loans to small businesses (FY 2018–2020)	3,995	368	4,363
Total amount of 7(a) and 504 loans to small businesses (FY 2018–2020)	$2,603	$177	$2,780
Estimated number of additional 7(a) and 504 loans available to newly-qualified small firms	−1	0	−1
Estimated additional 7(a) and 504 loan amount to newly-qualified small firms ($ million)	−$0.2	$0.0	−$0.2
% increase to 7(a)and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses	0.0%	0.0%	0.0%
Total number of EIDL loans to small businesses (FY 2018–2020) [4]	180	$27.0	207
Total amount of EIDL loans to small businesses (FY 2018–2020) [4]	$7.0	$1.7	$8.7
Estimated number of additional EIDL loans to newly qualified small firms [4]	0	$0.0	0
Estimated additional EIDL loan amount to newly qualified small firms ($ million) [4]	$0.0	$0.0	$0.0
% increase to EIDL loan amount relative to the total amount of disaster loans to small businesses [4]	0.0%	0.0%	0.0%

[1] These figures do not include two 6-digit NAICS industries and 5 subindustries or ''exceptions'' for which Economic Census data is not available.

[2] Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.

[3] Additional dollars are calculated multiplying average small business dollars obligated per unique firm times change in number of firms. Numbers of firms are calculated using the SBA's current size standards, not the contracting officer's size designation.

[4] 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.

Alternative Option Two: Retaining All Current Size Standards

Under this option, given the current COVID–19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (*i.e.,* zero benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (*e.g.,* access to set-aside contracts and capital) that become available to them under the option of increasing 144 and retaining 268 size standards adopted under this final rule. Moreover, retaining all size standards under Alternative Option Two would also be contrary to the SBA's statutory mandate to review and adjust, every five years, all size standards to reflect current industry and Federal market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small firms from small business benefits.

Congressional Review Act, 5 U.S.C. 801–808

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**. The OMB's Office of Information and Regulatory Affairs has determined that this is not a major rule under 5 U.S.C. 804(2).

Final Regulatory Flexibility Analysis

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. This final rule may have a significant impact on a substantial number of small businesses in the industries covered by this final rule. As described above, this final rule may affect small businesses 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 a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is 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 is 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 rules that may duplicate, overlap, or conflict with the rule; and (7) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries covered by this final rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the size standards adopted in this final rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

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 April 26, 2022, proposed rule.

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 April 26, 2022, proposed rule.

4. What is SBA's description and estimate of the number of small businesses to which the rule will apply?

Based on data from the 2017 Economic Census, SBA estimates that there are nearly 71,318 small firms covered under this rulemaking in industries with changes to size standards. Under this final rule, SBA estimates that nearly 242 additional businesses will become small.

5. What are the projected reporting, record keeping and other compliance requirements of the rule?

The size standard changes in this final rule impose 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 SAM and self-certify that they are small at least once annually (Federal Acquisition Regulation (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, businesses opting to participate in those programs must comply with SAM requirements. There are no new costs associated with SAM registration or annal re-certification. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a regulatory burden because they 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 establish 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, 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 SBA 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.

However, SBA considered two alternatives to increasing 144 and maintaining 268 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results, including the results from the evaluation of dominance and field of operation. In other words, the size standards of 144 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 204 industries for which the analytical results suggest lowering size standards would be lowered. This would cause a significant number of small businesses to lose their small business status, particularly in Sector 31–33 (see Table 10). Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing

144 and decreasing 204 size standards. SBA believes retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 144 and retaining 268 size standards. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses in terms of access to various small business benefits, including access to set-aside contracts and capital through SBA contracting and financial programs, and exemptions from paperwork and other compliance requirements.

Executive Order 13563

Executive Order 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 Regulatory Impact Analysis under Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this final rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act which requires SBA to review every five years all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every five years, thereafter. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a number of industries to reflect current Federal and industry market conditions.

SBA issued a revised white paper entitled ''Size Standards Methodology'' and published a notice in the April 27, 2018, edition 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. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and federal agencies before finalizing and adopting the revised Methodology. For a summary of comments received and SBA's responses, see the notice published in the **Federal Register** on April 11, 2019 (84 FR 14587). As part of the second five-year review of size standards under the Jobs Act, SBA has already issued five final rules reviewing all monetary-based size standards and all employee-based size standards that are part of the Wholesale Trade and Retail Trade sectors (see Footnote 1, above). This final rule is reviewing size standards under Sector 31–33 and other sectors with employee-based size standards not part of Wholesale and Retail Trade sectors completes SBA's second five-year review of size standards under the Jobs Act. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and federal agencies in developing size standards for those industries covered by this final rule. As required by the Jobs Act, SBA held two virtual public forums on size standards on June 14 and June 16, 2022, to update the public on the second five-year review of size standards and to consider public testimony on proposed size standards in the April 26, 2022, proposed rule. SBA received a total of 49 comments (including seven comments received during the public forums on size standards) to the proposed rule. In the Discussion of Comments section of this final rule, SBA summarizes and provides responses to the comments received on the proposed rule.

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. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this 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 rule will not impose any new reporting or record keeping requirements.

List of Subjects in 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.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

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); Pub. L. 116–136, Section 1114.

■ 2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' by revising entries ''212210,'' ''212230,'' ''212290,'' ''212313,'' ''212319,'' ''212322,'' ''212323,'' ''212390,'' entries ''221111'' through ''221115,'' ''221117,'' ''221118,'' ''221121,'' ''221122,'' ''221210,'' ''311111,'' ''311119,'' ''311211,'' ''311212,'' ''311221,'' ''311224,'' ''311225,'' ''311230,'' ''311313,'' ''311314,'' ''311411,'' ''311422,'' ''311511,'' ''311514,'' ''311611,'' ''311824,'' ''311920,'' ''311930,'' ''311941,'' ''311942,'' ''311991,'' ''311999,'' ''312111,'' ''312112,'' ''312140,'' ''313220,'' ''313230,'' ''314999,'' ''315120,'' ''315990,'' ''316110,'' ''321113,'' ''321114,'' ''321211,'' ''322110,'' ''323111,'' ''323120,'' ''324122,'' ''324191,'' ''324199,'' ''325110,'' ''325120,'' ''325130,'' ''325220,'' ''325311,'' ''325312,'' ''325314,'' ''325315,'' ''325320,'' ''325412,'' ''325520,'' entries ''325611'' through ''325613,'' ''325910,'' ''325991,'' ''325998,'' ''326121,'' ''326130,'' ''326220,'' ''326299,'' ''327211,'' ''327410,'' ''327910,'' ''327992,'' ''327999,'' ''331313,'' ''331315,'' ''331420,'' ''331491,'' ''331492,'' ''331512,'' ''331513,'' ''331523,'' ''331524,'' ''332112,'' ''332114,'' ''332117,'' ''332215,'' ''332439,'' ''332613,'' ''332722,'' ''332812,'' ''332992,'' ''332996,'' ''333131,'' ''333243,'' ''333924,'' ''333991,'' ''333993,'' ''333995,'' ''333998,'' ''334290,'' ''334416,'' ''334511,'' ''334512,'' ''334514,'' ''334517,'' ''334519,'' ''335132,''

''335311,'' ''335931,'' ''335991,'' ''335999,'' ''336310,'' ''336414,'' ''336419,'' ''336611,'' ''336991,'' ''337126,'' ''337214,'' ''339113,'' ''339910,'' ''339930,'' ''339991,'' ''339994,'' ''339999,'' ''483111,'' ''483113,'' ''483114,'' ''483211,'' ''483212,'' ''512230,'' ''512250,'' ''541715,'' and ''562910 (Exception)'' to 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 code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
Sector 21—Mining, Quarrying, and Oil and Gas Extraction			
*	*	*	*
Subsector 212—Mining (except Oil and Gas)			
*	*	*	*
212210	Iron Ore Mining		1,400
*	*	*	*
212230	Copper, Nickel, Lead, and Zinc Mining		1,400
*	*	*	*
212290	Other Metal Ore Mining		1,250
*	*	*	*
212313	Crushed and Broken Granite Mining and Quarrying		850
212319	Other Crushed and Broken Stone Mining and Quarrying		550
*	*	*	*
212322	Industrial Sand Mining		750
*	*	*	*
212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining		650
*	*	*	*
212390	Other Nonmetallic Mineral Mining and Quarrying		600
*	*	*	*
Sector 22—Utilities			
Subsector 221—Utilities			
221111	Hydroelectric Power Generation		750
221112	Fossil Fuel Electric Power Generation		950
221113	Nuclear Electric Power Generation		1,150
221114	Solar Electric Power Generation		500
221115	Wind Electric Power Generation		1,150
*	*	*	*
221117	Biomass Electric Power Generation		550
221118	Other Electric Power Generation		650
221121	Electric Bulk Power Transmission and Control		950
221122	Electric Power Distribution		1,100
221210	Natural Gas Distribution		1,150
*	*	*	*
Sector 31–33—Manufacturing			
Subsector 311—Food Manufacturing			
311111	Dog and Cat Food Manufacturing		1,250
311119	Other Animal Food Manufacturing		650
311211	Flour Milling		1,050
311212	Rice Milling		750
*	*	*	*
311221	Wet Corn Milling and Starch Manufacturing		1,300

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
311224	Soybean and Other Oilseed Processing		1,250
311225	Fats and Oils Refining and Blending		1,100
311230	Breakfast Cereal Manufacturing		1,300
311313	Beet Sugar Manufacturing		1,150
311314	Cane Sugar Manufacturing		1,050
*	* * * * * * *		
311411	Frozen Fruit, Juice, and Vegetable Manufacturing		1,100
*	* * * * * * *		
311422	Specialty Canning		1,400
*	* * * * * * *		
311511	Fluid Milk Manufacturing		1,150
*	* * * * * * *		
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing		1,000
*	* * * * * * *		
311611	Animal (except Poultry) Slaughtering		1,150
*	* * * * * * *		
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour		850
*	* * * * * * *		
311920	Coffee and Tea Manufacturing		1,000
311930	Flavoring Syrup and Concentrate Manufacturing		1,100
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing		850
311942	Spice and Extract Manufacturing		650
311991	Perishable Prepared Food Manufacturing		700
311999	All Other Miscellaneous Food Manufacturing		700
	Subsector 312—Beverage and Tobacco Product Manufacturing		
312111	Soft Drink Manufacturing		1,400
312112	Bottled Water Manufacturing		1,100
*	* * * * * * *		
312140	Distilleries		1,100
*	* * * * * * *		
	Subsector 313—Textile Mills		
*	* * * * * * *		
313220	Narrow Fabric Mills and Schiffli Machine Embroidery		550
313230	Nonwoven Fabric Mills		850
*	* * * * * * *		
	Subsector 314—Textile Product Mills		
*	* * * * * * *		
314999	All Other Miscellaneous Textile Product Mills		550
	Subsector 315—Apparel Manufacturing		
*	* * * * * * *		
315120	Apparel Knitting Mills		850
*	* * * * * * *		
315990	Apparel Accessories and Other Apparel Manufacturing		600
	Subsector 316—Leather and Allied Product Manufacturing		
316110	Leather and Hide Tanning and Finishing		800

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
	Subsector 321—Wood Product Manufacturing		
321113	Sawmills		550
321114	Wood Preservation		550
321211	Hardwood Veneer and Plywood Manufacturing		600
*	* * * * *	*	*
	Subsector 322—Paper Manufacturing		
322110	Pulp Mills		1,050
*	* * * * *	*	*
	Subsector 323—Printing and Related Support Activities		
323111	Commercial Printing (except Screen and Books)		650
*	* * * * *	*	*
323120	Support Activities for Printing		550
	Subsector 324—Petroleum and Coal Products Manufacturing		
*	* * * * *	*	*
324122	Asphalt Shingle and Coating Materials Manufacturing		1,100
324191	Petroleum Lubricating Oil and Grease Manufacturing		900
324199	All Other Petroleum and Coal Products Manufacturing		950
	Subsector 325—Chemical Manufacturing		
325110	Petrochemical Manufacturing		1,300
325120	Industrial Gas Manufacturing		1,200
325130	Synthetic Dye and Pigment Manufacturing		1,050
*	* * * * *	*	*
325220	Artificial and Synthetic Fibers and Filaments Manufacturing		1,050
325311	Nitrogenous Fertilizer Manufacturing		1,050
325312	Phosphatic Fertilizer Manufacturing		1,350
325314	Fertilizer (Mixing Only) Manufacturing		550
325315	Compost Manufacturing		550
325320	Pesticide and Other Agricultural Chemical Manufacturing		1,150
*	* * * * *	*	*
325412	Pharmaceutical Preparation Manufacturing		1,300
*	* * * * *	*	*
325520	Adhesive Manufacturing		550
325611	Soap and Other Detergent Manufacturing		1,100
325612	Polish and Other Sanitation Good Manufacturing		900
325613	Surface Active Agent Manufacturing		1,100
*	* * * * *	*	*
325910	Printing Ink Manufacturing		750
*	* * * * *	*	*
325991	Custom Compounding of Purchased Resins		600
*	* * * * *	*	*
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing		650
	Subsector 326—Plastics and Rubber Products Manufacturing		
*	* * * * *	*	*
326121	Unlaminated Plastics Profile Shape Manufacturing		600
*	* * * * *	*	*
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing		650

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * * * *		
326220	Rubber and Plastics Hoses and Belting Manufacturing		800
*	* * * * * * *		
326299	All Other Rubber Product Manufacturing		650
	Subsector 327—Nonmetallic Mineral Product Manufacturing		
*	* * * * * * *		
327211	Flat Glass Manufacturing		1,100
*	* * * * * * *		
327410	Lime Manufacturing		1,050
*	* * * * * * *		
327910	Abrasive Product Manufacturing		900
*	* * * * * * *		
327992	Ground or Treated Mineral and Earth Manufacturing		600
*	* * * * * * *		
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		750
	Subsector 331—Primary Metal Manufacturing		
*	* * * * * * *		
331313	Alumina Refining and Primary Aluminum Production		1,300
*	* * * * * * *		
331315	Aluminum Sheet, Plate, and Foil Manufacturing		1,400
*	* * * * * * *		
331420	Copper Rolling, Drawing, Extruding, and Alloying		1,050
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding		900
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).		850
*	* * * * * * *		
331512	Steel Investment Foundries		1,050
331513	Steel Foundries (except Investment)		700
331523	Nonferrous Metal Die-Casting Foundries		700
331524	Aluminum Foundries (except Die-Casting)		550
*	* * * * * * *		
	Subsector 332—Fabricated Metal Product Manufacturing		
*	* * * * * * *		
332112	Nonferrous Forging		950
332114	Custom Roll Forming		600
332117	Powder Metallurgy Part Manufacturing		550
*	* * * * * * *		
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.		1,000
*	* * * * * * *		
332439	Other Metal Container Manufacturing		600
*	* * * * * * *		
332613	Spring Manufacturing		600
*	* * * * * * *		
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing		600

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * * * *		
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.		600
*	* * * * * * *		
332992	Small Arms Ammunition Manufacturing		1,300
*	* * * * * * *		
332996	Fabricated Pipe and Pipe Fitting Manufacturing		550
*	* * * * * * *		
Subsector 333—Machinery Manufacturing (6)			
*	* * * * * * *		
333131	Mining Machinery and Equipment Manufacturing		900
*	* * * * * * *		
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing		550
*	* * * * * * *		
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing		900
333991	Power-Driven Hand Tool Manufacturing		950
*	* * * * * * *		
333993	Packaging Machinery Manufacturing		600
*	* * * * * * *		
333995	Fluid Power Cylinder and Actuator Manufacturing		800
*	* * * * * * *		
333998	All Other Miscellaneous General Purpose Machinery Manufacturing		700
*	* * * * * * *		
Subsector 334—Computer and Electronic Product Manufacturing (6)			
*	* * * * * * *		
334290	Other Communications Equipment Manufacturing		800
*	* * * * * * *		
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing		550
*	* * * * * * *		
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.		1,350
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.		650
*	* * * * * * *		
334514	Totalizing Fluid Meter and Counting Device Manufacturing		850
*	* * * * * * *		
334517	Irradiation Apparatus Manufacturing		1,200
334519	Other Measuring and Controlling Device Manufacturing		600
*	* * * * * * *		
Subsector 335—Electrical Equipment, Appliance and Component Manufacturing (6)			
*	* * * * * * *		
335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing		600
*	* * * * * * *		
335311	Power, Distribution, and Specialty Transformer Manufacturing		800
*	* * * * * * *		
335931	Current-Carrying Wiring Device Manufacturing		600

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * * * *		
335991	Carbon and Graphite Product Manufacturing		900
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing		600
	Subsector 336—Transportation Equipment Manufacturing [6]		
*	* * * * * * *		
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing		1,050
*	* * * * * * *		
336414	Guided Missile and Space Vehicle Manufacturing		1,300
*	* * * * * * *		
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.		1,050
*	* * * * * * *		
336611	Ship Building and Repairing		1,300
*	* * * * * * *		
336991	Motorcycle, Bicycle, and Parts Manufacturing		1,050
*	* * * * * * *		
	Subsector 337—Furniture and Related Product Manufacturing		
*	* * * * * * *		
337126	Household Furniture (except Wood and Upholstered) Manufacturing		950
*	* * * * * * *		
337214	Office Furniture (except Wood) Manufacturing		1,100
*	* * * * * * *		
	Subsector 339—Miscellaneous Manufacturing		
*	* * * * * * *		
339113	Surgical Appliance and Supplies Manufacturing		800
*	* * * * * * *		
339910	Jewelry and Silverware Manufacturing		700
*	* * * * * * *		
339930	Doll, Toy, and Game Manufacturing		700
*	* * * * * * *		
339991	Gasket, Packing, and Sealing Device Manufacturing		600
*	* * * * * * *		
339994	Broom, Brush, and Mop Manufacturing		750
*	* * * * * * *		
339999	All Other Miscellaneous Manufacturing		550
*	* * * * * * *		
	Sector 48–49—Transportation and Warehousing		
*	* * * * * * *		
	Subsector 483—Water Transportation		
483111	Deep Sea Freight Transportation		1,050
*	* * * * * * *		
483113	Coastal and Great Lakes Freight Transportation		800

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
483114	Coastal and Great Lakes Passenger Transportation		550
483211	Inland Water Freight Transportation		1,050
483212	Inland Water Passenger Transportation		550
*	* * * * * * *		
	Sector 51—Information		
*	* * * * * * *		
	Subsector 512—Motion Picture and Sound Recording Industries		
*	* * * * * * *		
512230	Music Publishers		900
*	* * * * * * *		
512250	Record Production and Distribution		900
*	* * * * * * *		
	Sector 54—Professional, Scientific and Technical Services		
	Subsector 541—Professional, Scientific and Technical Services		
*	* * * * * * *		
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) [11].		[11] 1,000
541715 (Exception 1).	Aircraft, Aircraft Engine and Engine Parts [11]		[11] 1,500
541715 (Exception 2).	Other Aircraft Parts and Auxiliary Equipment [11]		[11] 1,250
541715 (Exception 3).	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts [11].		[11] 1,300
*	* * * * * * *		
	Sector 56—Administrative and Support and Waste Management and Remediation Services		
*	* * * * * * *		
	Subsector 562—Waste Management and Remediation Services		
*	* * * * * * *		
562910 (Exception)	Environmental Remediation Services [14]		[14] 1,000
*	* * * * * * *		

Footnotes

* * * * * * *

[6] *NAICS Subsectors 333, 334, 335 and 336*—For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.

* * * * * * *

[11] *NAICS code 541713, 541714, and 541715*—

(a) ''Research and Development'' means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(c) For purposes of the Small Business Innovation Research (SBIR) and Small Business Transfer Technology (STTR) programs, the term ''research'' or ''research and development'' means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements. See 15 U.S.C. 638(e)(5) and section 3 of the SBIR and STTR policy directives available at *www.sbir.gov*. For size eligibility requirements for the SBIR and STTR programs, see § 121.702 of this part.

(d) ''Research and Development'' for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

* * * * * * *

[14] *NAICS 562910*—Environmental Remediation Services:

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts), although the general purpose of the procurement need not necessarily include remedial actions. Also, the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.,* engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Specialty Trade Contractors; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services, Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

* * * * * * *

Isabella Casillas Guzman,

Administrator.

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