FEDERAL REGISTER

Vol. 89 Monday,
No. 63 April 1, 2024

Pages 22327–22606

OFFICE OF THE FEDERAL REGISTER

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Presidential Documents

Title 3—

The President

Executive Order 14121 of March 27, 2024

Recognizing and Honoring Women's History

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Women and girls of all backgrounds have shaped our country's history, from the ongoing fight for justice and equality to cutting-edge scientific advancements and artistic achievements. Yet these contributions have often been overlooked. We must do more to recognize the role of women and girls in America's story, including through the Federal Government's recognition and interpretation of historic and cultural sites.

It is the policy of my Administration to recognize and honor the diverse trailblazers—including women and girls—who have contributed to the fabric of our Nation. One of the National Park Service's important functions is serving as the Nation's storyteller by managing a constellation of sites on behalf of the American public that, together, help preserve and honor different chapters in our Nation's history. The National Park Service honors trailblazing women and their contributions to the Nation, from Harriet Tubman and Eleanor Roosevelt, to Rosie the Riveter and Mamie Till-Mobley. Still, women's history is vastly underrepresented in our National Park System, creating an important opportunity to strengthen our Nation's recognition of the role of women in shaping this country.

This order directs actions that will strengthen the Federal Government's recognition of women's history and the achievements of women and girls from all backgrounds. It builds on steps I have taken to advance equity and equality across the Federal Government and to help tell a more complete story of our Nation's history, including through Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council), Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), and Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government). By honoring the women leaders of the past, we tell a more complete story of America and help build a more equal and equitable present and future.

Sec. 2. *Definitions.* For purposes of this order:

(a) The term ''sites of national importance'' includes National Park ''System units'' as defined in 54 U.S.C. 100102 (by reference to 54 U.S.C. 100501), national monuments designated by the Congress or by the President pursuant to 54 U.S.C. 320301, and National Historic Landmarks designated under 36 C.F.R. part 65.

(b) The term ''theme studies'' means studies conducted by the National Park Service pursuant to 36 C.F.R. 65.5(a) to identify historic properties in the United States that are nationally significant to a specific area of American history.

Sec. 3. *Recognizing and Honoring Women's History.* (a) Within 180 days of the date of this order, to strengthen the Federal Government's recognition of women's history, the Secretary of the Interior shall submit a report to the President that:

(i) includes an assessment of existing sites of national importance that are directly related to women's history, whether managed by the Department of Defense, the Department of the Interior, the Department of Agriculture, the Department of Commerce, or any other executive branch entity; and

(ii) identifies opportunities within sites of national importance to highlight important figures and chapters in women's history.

(b) To strengthen the Federal Government's recognition of women's history:

(i) The Secretary of the Interior shall conduct an overview theme study specific to women's history that identifies major topics in women's history to be addressed by a series of subsequent theme studies. The overview theme study and plan for additional studies shall address prominent women and girls in key periods of United States history, such as pre-European contact, Colonial America, the American Revolution, the abolition and suffrage movements, the Civil War and Reconstruction, the Progressive Era, the Great Depression and New Deal, World War II and post-war, the civil rights and women's rights movements, and contemporary America, among other topics. It also shall highlight women and girl leaders in advocacy and social movements, defense, diplomacy, education, law, medicine, the sciences, conservation and environmental protection, sports, the arts, or other professions and disciplines, as appropriate.

(ii) The Secretary of the Interior shall review previously completed theme studies and issue a report to help ensure representation of women's history in sites of national importance. This review of completed theme studies should include, among others, sites of national importance focused on or linked with the histories of Latino Americans; Asian Americans and Pacific Islanders; African Americans; people of Indigenous descent; and lesbian, gay, bisexual, transgender, queer, and intersex Americans; as well as American civil rights and labor histories. The report shall adopt an intersectional approach by including women from different backgrounds and communities and shall reflect diversity in factors such as gender, race, sexual orientation, gender identity, ethnicity, religion, Tribal affiliation, disability, age, geography, income, and socioeconomic status.

(iii) To inform relevant actions the Department of the Interior will take over the next 10 years, the Secretary of the Interior shall request recommendations from the National Park System Advisory Board on ways to improve the recognition of women's history across Federal parks, lands, and programs, including through historic designations and national monument designations. The Secretary of the Interior shall request that the National Park System Advisory Board produce interim recommendations to the Secretary within 270 days of the date of this order and produce final recommendations within 1 year of the date of this order.

(c) The Secretary of the Interior shall make available the findings from the overview theme study and series of subsequent theme studies conducted pursuant to subsection (b)(i) of this section to the Director of the Smithsonian American Women's History Museum and the corresponding council established in 20 U.S.C. 80t–2, for consideration, as appropriate, in developing their own exhibits.

Sec. 4. *Implementation.* The Secretary of the Interior shall consult with the Assistant to the President and Director of the White House Gender Policy Council, the Assistant to the President and Director of the Domestic Policy Council, and the Chair of the Council on Environmental Quality in implementing this order.

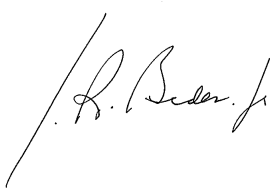
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 27, 2024.

[FR Doc. 2024–06931
Filed 3–29–24; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 441

[Docket No. FSIS–2022–0014]

Availability of Revised Guideline for Controlling Retained Water in Raw Meat and Poultry

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice of availability and request for comments.

SUMMARY: FSIS is announcing the availability of a guideline to assist meat (including Siluriformes fish and fish products) and poultry establishments in meeting the regulatory requirements for calculating the correct retained water percentage in raw livestock, poultry, and Siluriformes fish carcasses and parts resulting from post-evisceration processing, and the proper labeling of these products. FSIS is also announcing when the Agency will start verifying that establishments are correctly calculating retained water in applicable product. The guideline clarifies the methods an establishment may use to collect and use data to determine the amount of retained water in a product covered by its retained water protocol (RWP). In addition, it provides specific information on protocol development, process control, and air-chilled product claims.

DATES: Submit comments on or before May 31, 2024.

Establishments will have until September 30, 2024, to submit their revised protocols to the Risk Management and Innovations Staff (RMIS) via askFSIS for review. Establishments will have until April 1, 2025, to make any necessary label changes.

Unless the Agency receives substantive comments that warrant further review, RMIS will stop reviewing RWPs April 1, 2025. After that date, the RWPs will be reviewed by inspection program personnel (IPP).

ADDRESSES: A downloadable version of the guideline is available at *https://www.fsis.usda.gov/policy/fsis-guidelines.*

FSIS invites interested persons to submit comments on this guideline. Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This website provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

Mail: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.

Hand- or courier-delivered submittals: Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the agency name and docket number FSIS–2022–0014. Comments made in response to the docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Rachel A. Edelstein, Assistant Administrator, Office of Policy and Program Development, FSIS; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 2001, FSIS published the final rule ''Retained Water in Raw Meat and Poultry Products; Poultry Chilling Requirements'' (66 FR 1750), which set limits for water retained by raw, single-ingredient, meat and poultry products from post-evisceration processing, such as carcass washing and chilling. On December 2, 2015, FSIS amended its retained water regulations to include fish of the order Siluriformes and products derived from these fish (80 FR 75590). Under 9 CFR 441.10, raw livestock, poultry, and Siluriformes fish carcasses and parts (hereinafter, ''meat and poultry products'') are not permitted to retain water from post-evisceration processing unless the establishment preparing those carcasses and parts demonstrates to FSIS, with data collected in accordance with a written RWP, that any water retained is from addressing food safety requirements. In addition, the establishment is required to disclose on the product's label the maximum percentage of retained water in the raw product (9 CFR 441.10(b)). The required labeling statement is intended to help consumers make informed purchasing decisions. In 2005, FSIS issued the ''Compliance Guidelines for Retained Water'' to assist establishments in developing and carrying out their RWPs.

The revised guideline represents the Agency's current thinking on retained water requirements and includes new updates based on the latest scientific information. FSIS is encouraging establishments that have been using the previous version of the guideline to update their protocols with the recommendations in the new guideline in order to ensure their data are reproducible and statistically verifiable.

FSIS will update the guideline, as necessary, as new information become available.

Revised Guideline

Recently, RMIS conducted a review of older RWPs and found that establishments were not correctly applying formulae when determining changes in total moisture percentage in products after water spray or immersion processing. For example, many establishments subtract the pre-pack moisture percentages from the post-evisceration moisture percentages to calculate the retained water. However, these percentages are represented by different bases (or denominators). The post-evisceration moisture percentage reflects the dry weight and the natural water weight of the carcass. The pre-pack moisture percentage reflects the dry weight, the natural water weight (the amount of water that is in the bird naturally, prior to any aqueous applications), and the retained water weight.

Therefore, FSIS is making available a revised version of its 2005 guideline for

retained water to clarify for inspected establishments the ways that they can collect and use data to determine the amount of retained water in the products covered by their RWPs. The updated guideline includes better explanations of the measurement formulae used in determining retained water percentages. It provides the mathematical formulae for calculating retained water using the weight of the carcasses, the mathematical formulae for calculating the moisture percentages, and the mathematical formulae for calculating retained water using moisture percentages.

The guidance also explains that establishments should have large enough sample sizes to ensure that they are getting accurate results. In addition, the guidance expands on what constitutes acceptable analysis and conclusions of the retained water data for labeling purposes, to include demonstrating that a given package in a lot retains no more water than what is declared on the label, within a 20% margin of error.

The guideline recommends that establishments verify the retained water in their products at a frequency that ensures they are maintaining process control of the retained water in their systems, *i.e.,* that the retained water percentages do not exceed the labeling declarations over time. The guideline also provides information needed for retained water testing methods to be applied, such as the number of carcasses tested, the carcass type (*e.g.,* specific poultry carcass type), weight of carcass at each point tested, time period tested, the number of sample sets tested, and the frequency of how often retained water is verified for labeling purposes.

The updated guideline explains what 9 CFR 441.10 requires an establishment to do when developing a new or revising an existing RWP. For example, an establishment is required to state specifically the type of product (*e.g.,* carcass or giblets) to which the data apply. The guideline recommends that a flow chart of the establishment's process be included in the RWP.

FSIS has removed the regulatory pathogen reduction performance standards for *Salmonella* (9 CFR 310.25(b) and 9 CFR 381.94(b)) that are no longer in the regulations. The guideline recommends providing temperature reduction throughout the process. It also recommends including information on all antimicrobial treatments, not just the chiller, when describing special features of the chilling system. In addition, the guidance provides recommendations on water retention when using dips or sprays as interventions applied to beef trim, pork cuts, or poultry parts.

FSIS removed references to variables affecting retained water that occur pre-evisceration, such as scalding temperatures. FSIS also removed outdated information concerning testing various chiller settings.

RWP Review Process

In accordance with 9 CFR 441.10(c)(2), establishments must notify FSIS as soon as they have new or revised RWPs available for review by the Agency. Currently, establishments submit new and revised RWPs to RMIS, in the Agency's Office of Policy and Program Development, for review.

Establishments will have until September 30, 2024, to submit their revised protocols to RMIS. All meat and poultry establishments using incorrect formulae must submit revised protocols to RMIS (for single-ingredient products in which water was applied, whether that be a dip or a spray), if their processes result in retained water. Establishments need a system to show whether the products retain water. If RMIS finds a problem with the methodology, the establishments will need to address the noncompliance with the methodology immediately, so that they have enough time to collect new samples to determine the amount of retained water and adjust their labeling prior to April 1, 2025. Establishments may continue selling product while they fix the methodology in their RWPs and determine the amount of retained water.

Labeling

As stated above, the guidance provides information on analyzing the retained water data for labeling determinations.

It also covers the retained water labeling of giblets, products intended for export (like dark-meat chicken parts), marinated products, products that are subject to religious or dietary exemptions, and products sold at retail-service counters.

FSIS is providing establishments with additional time to correct the information. By April 1, 2025, establishments must have accurate, supportable retained water statements on their labels. If the statements are found to be inaccurate, IPP will issue noncompliance reports and tag product. FSIS chose April 1, 2025, as that should give establishments enough time to submit their protocols to FSIS, for FSIS to review the protocols, and for establishments to revise the information, if needed.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this notice online through the FSIS web page located at: *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password-protect their accounts.

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Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA*

Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/forms/electronic-forms,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov*

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Paul Kiecker,

Administrator.

[FR Doc. 2024–06837 Filed 3–29–24; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0459; Project Identifier MCAI–2024–00117–T; Amendment 39–22696; AD 2024–05–05]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comment; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. That AD applies to all ATR–GIE Avions de Transport Regional Model ATR42 and ATR72 airplanes. As published, the effective, incorporation by reference approval, and comment submittal dates specified in the preamble of the preceding correction are incorrect. This document corrects those errors. In all other respects, the original document remains the same.

DATES: This correction is effective March 29, 2024. The effective date of AD 2024–05–05 remains March 29, 2024. The date for submitting comments on AD 2024–05–05 remains April 29, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 29, 2024 (89 FR 18534, March 14, 2024; corrected March 26, 2024 (89 FR 20849)).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0459; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule; request for comment; correction, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, 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 IBR material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2024–0459.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *Shahram.Daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about AD 2024–05–05. Submit comments as instructed in AD 2024–05–05, Amendment 39–22696 (89 FR 18534, March 14, 2024; corrected March 26, 2024 (89 FR 20849)) (AD 2024–05–05).

Background

AD 2024–05–05 requires accomplishing a functional check of an affected part, replacing an affected part if necessary, and reporting the functional check results, and prohibits the installation of affected parts. That AD applies to all ATR—GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes.

Need for the Correction

As published, the effective, incorporation by reference approval, and comment submittal dates specified in the preamble of the preceding correction to AD 2024–05–05 are incorrect. The correct effective and incorporation by reference approval date is March 29, 2024. The correct date for submitting comments is April 29, 2024.

Related Service Information Under 1 CFR Part 51

EASA Emergency AD 2024–0044–E specifies the following procedures:

- Accomplishing a functional check of an affected part.
- Replacing an affected part with a serviceable part, if any discrepancy is detected during the functional check. (A discrepancy is any amount of air that flows through either connector of the right engine extinguishing system when compressed air is passed through either connector of the left engine extinguishing system, and vice versa.)
- Reporting inspection (*i.e.,* functional check) results to the airplane manufacturer.
- Prohibiting the installation of affected parts.

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.

Correction of Publication

This document corrects errors in the preceding correction to AD 2024–05–05 and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains March 29, 2024.

Since this action only corrects the preceding correction for AD 2024–05–05, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

2024–05–05 ATR—GIE Avions de Transport Régional: Amendment 39–22696; Docket No. FAA–2024–0459; Project Identifier MCAI–2024–00117–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 29, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional airplanes specified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model ATR42–200, –300, –320, and –500 airplanes.

(2) Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Unsafe Condition

This AD was prompted by a report of incorrect marking and assembly of the two-way valves for the left- and right-hand engine fire extinguishing systems. The FAA is issuing this AD to address inoperative two-way valves in both engine fire extinguishing systems. This condition, if not addressed, could lead to reduced performance of the engine fire extinguishing system, which could result in loss of control of the airplane.

(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, European Union Aviation Safety Agency (EASA) Emergency AD 2024–0044–E, dated February 15, 2024 (EASA AD 2024–0044–E).

(h) Exceptions to EASA AD 2024–0044–E

(1) Where EASA AD 2024–0044–E refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (4) of EASA AD 2024–0044–E specifies to report inspection results to ATR—GIE Avions de Transport Régional within a certain compliance time. For this AD, report inspection (*i.e.,* functional check) results at the applicable time specified in paragraph (h)(2)(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 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2024–0044–E.

(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 manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *Shahram.Daneshmandi@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.

(3) The following service information was approved for IBR on March 29, 2024 (89 FR 18534, March 14, 2024; corrected March 26, 2024 (89 FR 20849)).

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2024–0044–E, dated February 15, 2024.

(ii) [Reserved]

(4) For EASA AD 2024–0044–E, 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 ADs on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on March 27, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06817 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31537; Amdt. No. 4105]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective April 1, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 1, 2024.

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

For Examination

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

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

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

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

Availability

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

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 15, 2024.

Thomas J. Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 16 May 2024

Port Alsworth, AK, 05K/PAKX, RNAV (GPS) RWY 6R, Orig-A
Troy, AL, TOI, RADAR 1, Amdt 10B, CANCELED
Aspen, CO, KASE, Takeoff Minimums and Obstacle DP, Amdt 9
Rifle, CO, RIL, ILS RWY 26, Amdt 5
Rifle, CO, RIL, LOC–A, Amdt 10
Washington, DC, IAD, ILS OR LOC RWY 1C, ILS RWY 1C (SA CAT II), Amdt 3
Washington, DC, IAD, ILS OR LOC RWY 1L, ILS RWY 1L (CAT II), ILS RWY 1L (CAT III), Amdt 2
Washington, DC, IAD, RNAV (GPS) Y RWY 1C, Amdt 2
Washington, DC, IAD, RNAV (GPS) Y RWY 1L, Amdt 1
Washington, DC, IAD, RNAV (RNP) Z RWY 1C, Amdt 1
Washington, DC, IAD, RNAV (RNP) Z RWY 1L, Orig
Washington, DC, IAD, RNAV (RNP) Z RWY 1R, Amdt 1

Washington, DC, IAD, RNAV (RNP) Z RWY 19C, Amdt 1
Washington, DC, IAD, RNAV (RNP) Z RWY 19L, Amdt 1
Washington, DC, IAD, RNAV (RNP) Z RWY 19R, Orig
Wilmington, DE, ILG, VOR RWY 9, Amdt 7C
Honolulu, HI, HNL/PHNL, RNAV (RNP) Z RWY 8L, Amdt 4
Lihue, HI, PHLI, KAUAI TWO Graphic DP
Urbana, IL, C16, VOR–A, Amdt 11C
Eureka, KS, 13K, RNAV (GPS) RWY 18, Amdt 1
Eureka, KS, 13K, VOR RWY 18, Amdt 3
Sanford, ME, SFM, ILS OR LOC RWY 7, Amdt 5A
Sanford, ME, SFM, RNAV (GPS) RWY 7, Orig-E
Sanford, ME, SFM, RNAV (GPS) RWY 25, Orig-D
Menominee, MI, MNM, ILS OR LOC RWY 3, Amdt 4
Farmington, MO, FAM, RNAV (GPS) RWY 2, Amdt 2
Farmington, MO, KFAM, Takeoff Minimums and Obstacle DP, Amdt 7
Greenwood, MS, GWO, ILS OR LOC RWY 18, Amdt 9
Meridian, MS, MEI, RNAV (GPS) RWY 22, Amdt 2
Meridian, MS, KMEI, Takeoff Minimums and Obstacle DP, Amdt 7
Meridian, MS, MEI, VOR–A, Amdt 17A
Greensboro, NC, GSO, RNAV (GPS) RWY 14, Amdt 2B
Greensboro, NC, GSO, RNAV (GPS) RWY 32, Amdt 3B
Lincoln, NE, LNK, ILS Y OR LOC Y RWY 36, Amdt 12
Youngstown/Warren, OH, KYNG, RADAR–1, Amdt 15

[FR Doc. 2024–06691 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31538; Amdt. No. 4106]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective April 1, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 1, 2024.

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

For Examination

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

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

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

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

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

Availability

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 15, 2024.

Thomas J Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

****Effective Upon Publication*

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
4/18/24	NH	Portsmouth	Portsmouth Intl At Pease	4/1080	3/5/2024	RADAR 1, Amdt 1A.
4/18/24	PA	Danville	Danville	4/9573	2/26/24	RNAV (GPS) RWY 27, Orig-C.
4/18/24	PA	Danville	Danville	4/9574	2/26/24	RNAV (GPS) RWY 9, Orig-C.

[FR Doc. 2024–06692 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0912; FRL–11269–02–R3]

Approval and Promulgation of Air Quality Implementation Plan; Maryland; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze state implementation plan (SIP) revision submitted by Maryland on February 8, 2022, as satisfying applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule (RHR) for the program's second implementation period. Maryland's SIP submission addresses the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program.

DATES: This final rule is effective on May 1, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2022–0912. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Yarina, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region 3, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103–2852. The telephone number is (215) 814–2108. Mr. Yarina can also be reached via electronic mail at *yarina.adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 2022, the Maryland Department of the Environment (MDE) submitted a revision to its SIP to address regional haze for the second implementation period. MDE made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 Code of Federal Regulations (CFR) 51.308.

On August 25, 2023 (88 FR 58178), EPA published a notice of proposed rulemaking (NPRM) proposing approval of Maryland's February 8, 2022, SIP submission as satisfying the regional haze requirements for the second implementation period contained in the CAA and 40 CFR 51.308. EPA is now determining that the Maryland regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and is thus approving Maryland's submission into its SIP.

II. EPA's Response to Comments Received

EPA received two sets of comments in response to the NPRM. One set of comments originated from three Non-Governmental Organization (NGO) conservation groups writing as a

coalition (*i.e.,* the National Parks Conservation Association (NPCA), Sierra Club, and the Coalition to Protect America's National Parks), and one set of comments from an individual. These comments are available in the docket for this action via Docket ID Number EPA–R03–OAR–2022–0912 on the *www.regulations.gov* website. EPA's summary of and response to those comments is provided below.

Comment: NGO commenters praised Maryland's submittal, stating that ''the MDE has engaged with many of the worst haze-polluting facilities'' for the second implementation period, that ''Maryland's SIP should be a model for all of EPA Region 3'', and that ''the MDE engaged early with the National Park Service (''NPS'') as part of the Federal Land Manager (FLM) consultation period and provided in-depth information regarding control technologies, emissions limits, and retirement plans for the majority of sources identified by NPS.'' NGO commenters also provided additional feedback as to how Maryland's submittal could be further improved, which is described in more detail below.

Response: EPA appreciates and agrees with this comment.

Comment: NGO commenters also stated that SIP measures, including stationary source emission limitations, must be practically enforceable and approved into the SIP. NGO commenters express their belief that MDE improperly excluded certain facilities, including Brandon Shores Generating Station and the AES Warrior Run Facility, from a four-factor analysis. Specifically, NGO commenters express concern that MDE excluded the Brandon Shores Generating Station from being selected for a four-factor analysis based on an agreement between Brandon Shores Generating Station's owner and Sierra Club to cease coal combustion at the site by December 31, 2025, because the plans to cease fuel combustion or shutdown the facility are not a federally enforceable part of the revised SIP. NGO commenters therefore request that EPA require MDE to ''amend its Revised SIP to either (1) make Brandon Shores' plans to cease coal combustion or retire a federally enforceable part of the State's Revised SIP or (2) conduct a four-factor analysis for Brandon Shores to ensure the facility is supporting the MDE long-term strategy and reasonable progress goals.'' Regarding the AES Warrior Run Facility, which MDE did not select for a four-factor analysis, NGO commenters request that EPA require MDE to conduct a four-factor analysis for this facility per FLM recommendations.

Response: As explained in the NPRM, the RHR does not require states to consider controls for all sources, all source categories, or any or all sources in a particular source category. Rather, states have discretion to choose any source selection methodology or threshold that is reasonable, provided that the choices they make are reasonably explained.[1] [2] To this end, 40 CFR 51.308(f)(2)(i) requires that a state's SIP submission must include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii). In this particular instance, EPA proposed to find that Maryland's information and explanation included in its SIP submittal indicated that the State had in fact examined a reasonable set of sources, including sources identified by the FLMs. Furthermore, EPA proposed that Maryland had reasonably concluded that four-factor analyses were not necessary for all identified sources because the outcome would be that no further emission reductions would be reasonable for this planning period. EPA based the proposed finding on the State's examination of its largest operating electric generating units (EGUs) and its industrial commercial institutional (ICI) boilers, at the time of SIP submission, and on the emissions from and controls that apply to those sources, as well as on Maryland's existing SIP-approved nitrogen oxides (NO_X) and sulfur dioxide (SO_2) rules that effectively control emissions from the largest contributing stationary-source sectors. Therefore, it is reasonable to assume that selecting additional sources from the Mid-Atlantic/Northeast-Visibility Union (MANE–VU's) or FLMs' lists for four-factor analysis would not have resulted in additional emission reduction measures being determined to be necessary to make reasonable progress for the second implementation period.

Regarding Brandon Shores Generating Station, EPA notes that based on an existing consent agreement between the owner/operator of Brandon Shores and Sierra Club, the facility is scheduled to shut down by June 1, 2025. As noted by the NGO commenters, it is possible that the shutdown date could be extended as far as 2028. However, EPA notes that, even if the owner/operator of this facility were to extend or delay its currently scheduled shutdown date of June 1, 2025, to 2028, which is the date anticipated by NGO commenters,[3] this would be unlikely to affect Maryland's conclusion for this facility (*i.e.,* that no additional controls are reasonable based on installing controls during the short remaining useful life of the source).[4] Regarding the AES Warrior Run facility, EPA notes that the facility recently filed a deactivation notice with its Regional Transmission Organization (RTO), PJM Interconnection LLC, to retire by June 1, 2024,[5] and PJM's response to that notice indicated that the facility could deactivate as desired.[6] Thus, any assessment of additional emissions controls for this facility would also likely conclude that no additional controls are reasonable based on the short remaining useful life of the source.

It is therefore likely that both Brandon Shores and AES Warrior Run will be shut down by 2025 or 2028 at the latest, and EPA notes that either of these dates would still fall within the second implementation period. However, Maryland was not obligated to select these facilities for a four-factor analysis in order to make reasonable progress and fulfill its RHR obligations for the second implementation period, and EPA's proposed approval of Maryland's SIP submission was not dependent on Maryland selecting those facilities for a four-factor analysis.

Therefore, regardless of the ultimate outcome for those facilities, Maryland satisfied its RHR obligations under 40 CFR 51.308(f)(2) and considered and reasonably explained the methodology

[1] See 88 FR 58178, 58194 (August 25, 2023).

[2] See Sections 2 and 2.1 of Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. *www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[3] See docket document, ''2023–11–13—Sierra Club ex parte letter to PJM re Brandon Shores, AES Warrior Run'' dated November 13, 2023; and Sierra Club press release dated November 15, 2023, ''Maryland On Track To Be Coal-Free by 2025 with Announced Retirement of Warrior Run Plant,'' at *www.sierraclub.org/press-releases/2023/11/maryland-track-be-coal-free-2025-announced-retirement-warrior-run-plant.*

[4] In addition, whether such an extension or delay occurs appears to be dependent on whether one NGO commenter, Sierra Club, will agree to a revision of the consent agreement with the owner/operator of Brandon Shores. See docket documents, ''2023–12–05—PJM Letter to Sierra Club re Brandon Shores Consent Decree'' dated December 5, 2023, and ''2023–12–07—Talen Energy response to PJM re Brandon Shores'', dated December 7, 2023.

[5] See docket document, ''2023–09–30—AES Warrior Run Deactivation Notice to PJM'', dated September 30, 2023.

[6] See docket document, ''2023–11–30—PJM Response Letter to AES Warrior Run Deactivation Notice'', dated November 30, 2023.

by which it selected and analyzed the particular sources that have the largest contribution to visibility impairment in Class I areas.

Comment: NGO commenters also state that EPA must thoroughly consider environmental justice concerns, and state that the Maryland SIP revision fails to adequately account for these concerns. The commenters go on to state that the energy and non-air quality environmental impacts of compliance factor directs states to consider the broader environmental implications of their regional haze plans, by requiring an analysis of the ''non-air quality environmental impacts of compliance,'' including environmental justice. In addition, the commenters assert that EPA failed to consider environmental justice concerns in several Maryland communities around AES Warrior Run, NRG Morgantown Generating Station, and Wheelabrator Baltimore, identified as having high percentiles of low-income populations and unemployment rates, which are two of the Socioeconomic Indicators in the Database. The commenters also assert that, according to EPA's EJ Screen, the community near the Wheelabrator Baltimore facility ranks above the 80th percentile for State environmental justice indexes for fine particulate matter ($PM_{2.5}$) and ozone.

Response: The regional haze statutory provisions do not explicitly address considerations of environmental justice, and neither do the regulatory requirements of the second planning period in 40 CFR 51.308(f), (g), and (i). As explained in ''EPA Legal Tools to Advance Environmental Justice,'' [7] the CAA provides states with the discretion to consider environmental justice in developing rules and measures related to regional haze. While a State may consider environmental justice under the reasonable progress factors, neither the statute nor the regulation requires states to conduct an environmental justice analysis for EPA to approve a SIP submission. Furthermore, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation of environmental justice with regard to a regional haze SIP. In this instance, Maryland concluded that it ''has documented its long-term strategy to assure reasonable progress toward visibility goals in nearby Class I areas and assessed its progress in reducing emissions of visibility impairing pollutants.'' [8]

The NGO commenters provided additional information from an EJ Screen analysis. Without agreeing with the particular relevance or accuracy of this information, EPA acknowledges the EJ Screen information provided as part of the comment, which identifies certain demographic and environmental information regarding communities near AES Warrior Run, NRG Morgantown Generating Solution, and Wheelabrator Baltimore. The focus of the SIP at issue here, the regional haze SIP for Maryland, is SO_2 and NO_X emissions as they impact visibility in Class I areas. This action addresses ten EGU sources and six industrial/institutional sources of air pollution impacting Class I areas. As discussed in the NPRM and in this final rule, EPA has evaluated Maryland's SIP submission against the statutory and regulatory regional haze requirements and determined that it satisfies those minimum requirements.

Comment: NGO commenters also alleged that the timing and nature of MDE's state public comment period for this SIP submission hindered stakeholder participation, due to alleged insufficient notification of Maryland's comment period on the revised SIP, and the fact that the state's public comment period encompassed two Federal holidays. The commenters state that, as a result, they were unable to engage directly with MDE during its public comment period for this SIP submittal. The commenters also state that they want ''to ensure that EPA is aware of the lack of public communication related to the State's public comment period on the Revised SIP.''

Response: In reviewing Maryland's February 8, 2022, regional haze SIP revision, EPA found that MDE satisfied the public notice and comment requirements for SIP revisions.[9] Maryland provided an opportunity to submit written comments and request a public hearing. MDE published Maryland's revised SIP on the MDE website for public comment from December 1, 2021 to January 4, 2022. The publication included notification of the 30-day notice period and information about the date, place, and time of the public hearing, as required under 40 CFR 51.102(a). After reasonable notice, the public hearing was held online on January 4, 2022, due to the COVID–19 pandemic. *See* 40 CFR 51.102(d). The 30-day notice period is not limited to business days. *Id.* Finally, Maryland's revised SIP submittal includes a certification that the state satisfied the requirements in 40 CFR 51.102(a) and (d). See 40 CFR 51.102(f). EPA notes that the commenters do not allege that MDE failed to fulfill its public notice and comment obligations, nor is there any indication that the commenters requested an extension to the state's public comment period to allow for more time. EPA has seen no evidence that Maryland did not fulfill its public notice requirements. In this instance, the State's public comment process meets the minimum requirements in the 40 CFR part 51, Appendix V for SIP submissions.

Comment: One individual commenter, requested that the EPA ''reconsider'' Maryland's SIP revision'' and require that Maryland examine several source categories, including power plants (*i.e.,* electric generating units), industrial boilers, cement kilns, glass plants, landfills, and legacy diesel vehicles and equipment, and that EPA require additional emissions control technologies for these source categories as part of Maryland's Regional Haze SIP (*e.g.,* selective catalytic reduction, flue gas desulfurization, diesel oxidation catalysts, etc), and that it implement measures to ''deter and punish'' owners and operators of legacy diesel vehicles and equipment owners in con-compliance with the emission reduction measures. The commenter also expressed concern that Maryland would not be able to achieve the Reasonable Progress Goals (RPGs) for the second implementation period if these emissions controls were not implemented.

Finally, the commenter commended Maryland's efforts to increase its renewable energy production and reduce its reliance on fossil fuel and encouraged the state to install wind and solar power and consider small modular nuclear power as ''a clean reliable and safe source of electricity.''

Response: As explained in the NPRM, the 2021 Clarifications Memo for the RHR, and in the response to NGO commenters above, the RHR does not require states to consider controls for all sources, all source categories, or any or all sources in a particular source category. Rather, the states have discretion to choose any source selection methodology or threshold that is reasonable, provided that the choices they make are reasonably explained and result in a set of sources which capture a meaningful portion of the state's total contribution to visibility

[7] See EPA Legal Tools to Advance Environmental Justice, May 2022, available at *www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf* at 35–36.

[8] See Section 3 of the MD Regional Haze SIP for the Second Implementation Period 2018–2028 (February 8, 2022).

[9] See 40 CFR 51.102; 40 CFR 51.104; and 40 CFR part 51, appendix V, section 2.1.

impairment.[10] [11] To this end, 40 CFR 51.308(f)(2)(i) requires that a state's SIP submission must include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii). In this particular instance, EPA proposed to find that Maryland's information and explanation included in its SIP submittal indicated that the State had in fact examined a reasonable set of sources, including sources identified by the FLMs. Furthermore, EPA proposed that Maryland had reasonably concluded that four-factor analyses for all identified sources were not necessary because the outcome would be that no further emission reductions would be reasonable for this planning period. EPA based the proposed finding on the State's examination of its largest operating EGUs and ICI boilers at the time of SIP submission, and on the emissions from and controls that apply to those sources, as well as on Maryland's existing SIP-approved NO_X and SO_2 rules that effectively control emissions from the largest contributing stationary-source sectors. In short, even though Maryland did not consider controls for every type of source and source category listed by the commenter, Maryland did consider and reasonably explain the methodology by which it considered the particular sources that capture a meaningful portion of the state's total contribution to visibility impairment, consistent with EPA guidance and with Maryland's obligations under the RHR.

The commenter also asserts, without supporting documentation, that because the Maryland plan ''relies heavily on existing measures and technologies that have already been implemented or required by other Federal or state regulations,'' that the plan may not be able to meet the reasonable progress goals (RPGs). The comment appears to misunderstand the relationship between the RPGs and long-term strategies established by the four-factor analysis for reasonable progress, as well as the difference between RPGs and the reasonable progress necessary to be achieved via the long-term strategies. EPA explained at length in the NPRM, in particular in section E. Long-Term Strategy for Regional Haze, that Maryland's long-term strategy includes the enforceable emission limitations, compliance schedules, and other measures necessary to make reasonable progress.

EPA reiterates that the process for establishing RPGs for each Class I area is prescribed in the Regional Haze Rule and its amendments and related guidance.[12] [13] [14] The reasonable progress goals established by the states with Class I areas are not directly enforceable but will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan in providing for reasonable progress towards achieving natural visibility conditions at that area'' 40 CFR 51.308(f)(3)(iii). EPA notes that only states with Class I areas within their borders are required to set RPGs for those areas. Maryland does not have any Class I areas within its borders and thus is not required to set RPGs.

All States, regardless of whether they have Class I areas within their borders are, however, instructed to establish criteria for selecting sources that emit visibility impairing pollutants that impact visibility at downwind Class I Areas for further evaluation of potential emissions controls as part of a four-factor analysis, in keeping with the state's long-term strategy for making reasonable progress toward meeting the national visibility goal. To that end, states have discretion in establishing source selection processes and criteria, provided that such processes and criteria: are adequately justified and supported; select a reasonable number of sources that emit visibility impairing pollutants affecting downwind Class I Areas; and put the state on target for remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas.[15] To this end, 40 CFR 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, and each state having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas.

As noted in the NPRM, the core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the state. The long-term strategy must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).[16] The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement in order to make reasonable progress towards the national visibility goal.[17] Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing measures that a source is already implementing.[18] Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a state's long-term strategy in its SIP.[19] The 2021 Clarifications Memo to the RHR explains that RPGs cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress and that RPGs for states with Class I areas are the modeled result of the measures in states' long-term strategies.

Therefore, the outcome of a state's source selection process and subsequent evaluation of technically feasible and cost-effective emissions controls as part

[10] See 88 FR 58178, 58194 (August 25, 2023).

[11] See Sections 2 and 2.1 of Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. *www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[12] See 40 CFR 51.308; 64 FR 35714, July 1, 1999; and 82 FR 3078, January 10, 2017.

[13] See Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. *www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

[14] See Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. *www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[15] See CAA 169A(b)(2)(B).

[16] See 40 CFR 51.308(f)(2).

[17] See 40 CFR 51.308(f)(2)(i).

[18] See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10.

[19] See 40 CFR 51.308(f)(2).

of four-factor analyses determine what constitutes the state's long-term strategy for that particular implementation period. If a state's source selection process and evaluation of technically feasible and cost-effective controls results in a long-term strategy that includes the enforceable emissions limitations, compliance schedules and other measures that are necessary to make reasonable progress, then the requirements of the Regional Haze Rule are satisfied for that Implementation Period.

III. Final Action

EPA is approving, as a SIP revision, the State of Maryland's February 8, 2022, SIP submission as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f).

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the consent order, effective July 6, 2021, between MDE and Raven Power Fort Smallwood LLC, for H.A. Wagner Generating Station to permanently cease the combustion of coal by January 1, 2026 as discussed in section II of this preamble. The consent order is contained in Appendix 19 of MDE's February 8, 2022 Regional Haze SIP for the Second Implementation Period 2018–2028 submitted on behalf of the State of Maryland. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 3 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

MDE did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not

be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070:

■ a. Amend the table in paragraph (d) by adding an entry for ''Raven Power Fort Smallwood, LLC—H.A. Wagner Generating Station'' at the end of the table; and

■ b. Amend the table in paragraph (e) by adding an entry for ''Regional Haze Plan from 2018–2028'' at the end of the table.

The additions read as follows:

§ 52.1070 Identification of plan.

* * * * *

(d) * * *

Name of source	Permit No./type	State effective date	EPA approval date	Additional explanation
*	*	*	*	* * *
Raven Power Fort Smallwood, LLC—H.A. Wagner Generating Station.	Consent Order ..	7/6/2021	4/1/24, [INSERT **Federal Register** CITATION].	Consent Order approved via Docket EPA–R03–OAR–2022–0912, as an element of Maryland's February 8, 2022 Regional Haze Plan from 2018–2028, Appendix 19.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Regional Haze Plan from 2018–2028.	State-wide	2/8/2022	4/1/24, [INSERT **Federal Register** CITATION].	

[FR Doc. 2024–06415 Filed 3–29–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 221206–0261]

RIN 0648–BM97

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2023–2024 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial and recreational groundfish fisheries. This action is intended to allow fishing vessels to access more abundant groundfish stocks while protecting rebuilding stocks.

DATES: This final rule is effective April 1, 2024.

ADDRESSES: *Electronic Access:* This rule is accessible at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *https://www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Dr. Sean Matson: 206–526–6187 or *sean.matson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish seaward of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for 2-year periods (biennia). NMFS published the final rule to implement harvest specifications and management measures for the 2023–2024 biennium for most species managed under the PCGFMP on December 16, 2022 (87 FR 77007). The management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At its March 2024 meeting, the Council recommended inseason measures, modifying fixed gear regulations in the area south of lat. 40°10′ N, including within the Non-

Trawl Rockfish Conservation Area (RCA) boundaries, and commercial fixed gear trip limits for certain species within the limited entry (LE) and open access (OA) fisheries, including lingcod, the other flatfish complex, and the minor shelf rockfish complex. The purpose of these inseason measures is to promote the conservation of quillback rockfish and vermillion/sunset rockfish off California, while balancing the economic benefits of fishing opportunity. The Council also recommended modifications to Federal regulations, concerning the portion of the California recreational fishery that falls within Federal waters, which include changes to season dates and depth limits, and revisions to the sub-bag limit for vermilion/sunset rockfish south of lat. 40°10′ N. The March recommendations were communicated in a letter to NMFS dated March 20, 2024.

The recommendations were based on analysis using newly available information on catch and attainment, and input from industry at the March meeting. Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.,* overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL], and harvest guidelines [HG]) recommended biennially by the Council and based on the best scientific information available at that time (50 CFR 660.60(b)). During development of the harvest specifications, the Council also recommends management measures (*e.g.,* trip limits, area closures, and bag limits) that are meant to control catch so as not to exceed the harvest specifications. The harvest specifications and management measures developed for the 2023–2024 biennium used data through the 2021 fishing year. Each of the adjustments to management measures discussed below are based on updated fisheries information that was unavailable when the analysis for the current harvest specifications was completed. As new fisheries data becomes available, adjustments to management measures are assessed and associated mortality is projected, so as to help harvesters achieve but not exceed the harvest limits.

Management Measures for Commercial Fixed Gear, LE and OA Fisheries

Non-Trawl RCA

At the March 2024 meeting, the Council recommended actions to reduce fishing mortality of quillback rockfish and vermillion/sunset rockfish, off California, through the 2024 fishing season. Quillback rockfish off California is an overfished stock. Vermilion/sunset rockfish is managed in a stock complex, however, fishing mortality for the stock has exceeded the harvest specification contributions to the complex for several years. The recommended actions would reduce fishing mortality of these species, while further narrowing the scope of restrictions and minimizing the economic impact to fishing communities to the extent possible. These included a recommendation to adjust the Non-Trawl RCA latitudinal boundaries for the area between lat. 40°10′ N and lat. 36° N (to utilize a boundary at lat. 37°07′ N rather than lat. 36° N), so that the area between lat. 37°07′ N and lat. 34°27′ N, from 50 to 75 fathoms (fm), would be closed to fishing, and in the area from lat. 40°10′ N to lat. 37°07′ N, the 3 nautical mile line to 75fm, would be closed to fishing. The recommended non-trawl boundaries, as well as those under current regulations are shown in tables 1a and 1b.

TABLE 1a—NON-TRAWL ROCKFISH CONSERVATION AREA BOUNDARIES, SOUTH OF LAT. 40°10′ N: CURRENT REGULATION

Area (latitude)	Depth	Months
40°10′ N–36° N	Shoreward EEZ–75 fm line	January through December.
36° N–34°27′ N	50–75 fm line	January through December.

TABLE 1b—NON-TRAWL ROCKFISH CONSERVATION AREA BOUNDARIES, SOUTH OF LAT. 40°10′ N: COUNCIL RECOMMENDED

Area (latitude)	Depth	Months
40°10′ N–37°07′ N	Shoreward EEZ–75 fm line	January through December.
37°07′ N–34°27′ N	50–75 fm line	January through December.

Trip Limits

The recommended modifications of the Non-Trawl RCA in California necessitated corresponding changes to the latitude lines designating area-specific LE and OA trip limits for lingcod, the other flatfish complex, and the minor shelf rockfish complex (defined at § 660.11), south of lat. 40°10′ N (table 2a).

For the minor shelf rockfish complex south of lat. 40°10′ N, in the LE fishery; in addition to exchanging the lat. 36° N boundary, in favor of the lat. 37°07′ N boundary, one latitudinal stratum was added with separate trip limits, dividing the area south of lat. 40°10′ N into three strata under Council recommendations, compared with two strata under current regulations. The new management area boundaries and corresponding trip limits for minor shelf rockfish are shown in table 2b.

For minor shelf rockfish south of lat. 40°10′ N, in the OA fishery; in addition to exchanging the lat. 36° N boundary, in favor of the lat. 37°07′ N boundary, one latitudinal stratum was added with separate trip limits, dividing the area south of lat. 40°10′ N into three strata under Council recommendations, compared with two strata under current regulations. The new management area boundaries and corresponding trip limits for minor shelf rockfish are shown in table 2b.

The Council's Groundfish Management Team (GMT) analyzed the combination of proposed changes (*Agenda Item F.8.a Supplemental GMT Report 1, March 2024*) to trip limit amounts, by area strata, for minor shelf rockfish south of lat. 40°10′ N. These combinations included a specifically designed balance of modest increases, as well as decreases, in trip limits, together with the changes to the Non-Trawl RCA boundaries. The GMT found in their analysis that quillback rockfish encounters between lat. 36° and 37°07′ N have been rare throughout the

relevant time series. Only 0.7 percent of commercial quillback rockfish landings occurred south of lat. 37°07′ N over the most recent 5-year period (2019–2023), and only 3.7 percent over a much longer time series (1992–2022). As such, the changes in trip limits south of lat. 37°07′ N are congruent with both maintaining adequate access by commercial fishers to groundfish resources and the conservation needs of quillback rockfish off California, which was recently determined to be overfished (NMFS notified the Council of the overfished status determination for quillback rockfish on December 14, 2023; *Agenda Item F.2, Attachment 2, March 2024*), and maintaining catches of vermillion/sunset rockfish at a sustainable level (catches have been high since 2015).

Trip limits with corresponding areas are shown in Table 2. Recommended changes for the remaining lingcod, other flatfish complex, and minor shelf rockfish species did not involve any new limits themselves, only the redesignation of the latitudinal boundaries for existing limits, in accordance with the new recommended Non-Trawl RCA boundaries.

TABLE 2a—TRIP LIMITS UNDER CURRENT REGULATION, AND COUNCIL-RECOMMENDATIONS, FOR LE AND OA NON-TRAWL FISHERIES, SOUTH OF LAT. 40°10′ N: CURRENT REGULATION

Fleet	Species	Lat. area	Limit
LE	Lingcod	40°10′ N–36° N	1,600 lb (726 kg)/2 months seaward of the non-trawl RCA; 0 lb/2 months inside the non-trawl RCA.
		South of 36° N	1,600 lb (726 kg)/2 months.
	Minor shelf rockfish	40°10′ N–34°27′ N	6,000 lb (2,722 kg)/2 months, of which no more than 500 lb (227 kg) may be vermilion/sunset.
		South of 34°27′ N	6,000 lb (2,722 kg)/2 months, of which no more than 3,000 lb (1,361 kg) may be vermilion/sunset.
	Other flatfish	40°10′ N–36° N	10,000 lb (4,536 kg)/month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA.
		South of 36° N	10,000 lb (4,536 kg)/month.
OA	Lingcod	40°10′ N–36° N	700 lb (318 kg)/2 months seaward of the non-trawl RCA; 0 lb/2 months inside the non-trawl RCA.
		South of 36° N	700 lb (318 kg)/2 months.
	Minor shelf rockfish	40°10′ N–36° N	3,000 lb (1,361 kg)/2 months, of which no more than 300 lb (136 kg) may be vermilion/sunset.
		South of 36° N	3,000 lb (1,361 kg)/2 months, of which no more than 900 lb (408 kg) may be vermilion/sunset.
	Other flatfish	40°10′ N–36° N	5,000 lb (2,268 kg)/month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA.
		South of 36° N	5,000 lb (2,268 kg)/month.

TABLE 2b—TRIP LIMITS UNDER CURRENT REGULATION, AND COUNCIL-RECOMMENDATIONS, FOR LE AND OA NON-TRAWL FISHERIES, SOUTH OF LAT. 40°10′ N: COUNCIL RECOMMENDED

Fleet	Species	Area	Limit
LE	Lingcod	40°10′ N–37°07′ N	1,600 lb (726 kg)/2 months seaward of the non-trawl RCA; 0 lb/2 months inside the non-trawl RCA.
		South of 37°07′ N	1,600 lb (726 kg)/2 months.
	Minor shelf rockfish	40°10′ N–37°07′ N	6,000 lb (2,722 kg)/2 months, of which no more than 500 lb (227 kg) may be vermilion/sunset.
		37°07′ N–34°27′ N	8,000 lb (3,629 kg)/2 months, of which no more than 500 lb (227 kg) may be vermilion/sunset.
		South of 34°27′ N	5,000 lb (2,268 kg)/2 months, of which no more than 3,000 lb (1,361 kg) may be vermilion/sunset.
	Other flatfish	40°10′ N–37°07′ N	10,000 lb (4,536 kg)/month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA.
		South of 37°07′ N	10,000 lb (4,536 kg)/month.
OA	Lingcod	40°10′ N–37°07′ N	700 lb (318 kg)/2 months seaward of the non-trawl RCA; 0 lb/2 months inside the non-trawl RCA.
		South of 37°07′ N	700 lb (318 kg)/2 months.
	Minor shelf rockfish	40°10′ N–37°07′ N	3,000 lb (1,361 kg)/2 months, of which no more than 300 lb may be vermilion/sunset.
		37°07′ N–34°27′ N	4,000 lb (1,8141 kg)/2 months, of which no more than 300 lb may be vermilion/sunset.
		South of 34°27′ N	3,000 lb (1,814 kg)/2 months, of which no more than 900 lb may be vermilion/sunset.
	Other flatfish	40°10′ N–37°07′ N	5,000 lb (2,268 kg)/2 months seaward of the non-trawl RCA; 0 lb/2 months inside the non-trawl RCA.
		South of 37°07′ N	5,000 lb (2,268 kg)/month.

Pacific Halibut

At its March 2024 meeting, the Council also recommended new annual trip limit ratios for the incidental catch of Pacific halibut in the primary (tier) sablefish fishery north of Point Chehalis, Washington, starting for the 2024 season. These measures are reviewed each season. The Council recommended a trip limit ratio of 130 lb of dressed Pacific halibut per 1,000 lb of

sablefish, plus two additional halibut for the primary fishery north of Point Chehalis, as recommended by the Council's Groundfish Advisory Subpanel (GAP). This trip limit is a reduction from last year when it was 150 lb of dressed Pacific halibut per 1,000 lb of sablefish. The GAP related during their discussion of this topic that this reduction was likely warranted given the reduction in the overall allocation for incidental catch in the sablefish fishery from 70,000 lbs in 2023 to 50,000 lbs in 2024 (*89 FR 19275, March 18, 2024*). Additionally, the GAP noted that it expects the new trip limit to be an adequate amount to utilize the overall allocation and prevent waste of bycatch. If necessary, incidental trip limits could be updated later in the year, by the Council, through inseason action.

California Recreational Groundfish Fisheries in Federal Waters

The Council recommended modifications to Federal regulations concerning the portion of the California recreational groundfish fishery that falls within Federal waters, consistent with California state regulations for the fishery. The State of California recently revised its state regulations, including changes to season dates and depth limits for the California rockfish, cabezon, and greenling (RCG) complex as well as for lingcod, and revising a sub-bag limit for vermilion/sunset rockfish south of lat. 40°10′ N. The Council recommended changes were presented to the Council by the California Department of Fish and Wildlife (CDFW) (*Agenda Item F.8.a Supplemental CDFW Report 2 March 2024*) in a request for consistent action in federal waters, discussed by the GMT, and recommended by the GAP (*Agenda Item F.8.a Supplemental GAP Report 1 March 2024*). The GMT did not analyze nor make a recommendation regarding CDFW's proposal. The federal regulations for the California recreational groundfish fishery for RCG and lingcod that were set at the beginning of 2023 are summarized in Table 3, inseason actions that were taken during 2023 are not incorporated. The Council recommended regulations for 2024 are summarized in Table 4. Table 3 and Table 4 are summaries only. Refer to 50 CFR 660.360(c)(3)(i)(A) for a detailed description of the California recreational groundfish fishery structure.

Table 3 – Summary of the California recreational groundfish fishery season structure, by month, area, and depth, currently in regulation

Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern	Closed all depths				Open all depths					Open >50 fm		
Mendocino	Closed all depths				Open >50 fm		Open all Depths			Open >50 fm		
San Francisco	Closed all depths				Open >50 fm		Open all depths			Open >50 fm		
Central	Closed all depths				Open all depths					Open >50 fm		
Southern	Closed all depths				Open all depths				>50 fm			

Table 4 – Summary of California recreational groundfish season structure, by month, area, and depth, according to March 2024 Council recommendations. Open in depths greater or less than 50 fm shown as ">50 fm" or "<50 fm" respectively.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern	Closed in EEZ			>50 fm	Closed in the EEZ					>50 fm	Closed in EEZ	>50 fm
Mendocino	Closed in EEZ			>50 fm	Closed in the EEZ					>50 fm	Closed in EEZ	>50 fm
San Francisco	Closed in EEZ			>50 fm	Closed in the EEZ					>50 fm	Closed in EEZ	>50 fm
Central N of 36°	Closed in EEZ			>50 fm	Closed in the EEZ					>50 fm	Closed in EEZ	>50 fm
Central S of 36°	Closed in EEZ			Open all depths			<50 fm			>50 fm		
Southern	Closed in EEZ			Open all depths			<50 fm			>50 fm		

Classification

This final rule makes routine inseason adjustments to the Pacific Coast groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Dr. Sean Matson in NMFS West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or to view at the NMFS West Coast Groundfish website: *https://www.fisheries.noaa.gov/species/west-coast-groundfish*.

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. These revisions are in response to new information about the fishery, and to conservation issues that need to be addressed for the 2024 fishing year. The adjustments to management measures in this document increase trip limits and decrease size limits for fisheries off California to allow additional economic opportunity, while keeping catch within allocations established by the 2023–2024 harvest specifications. The GMT found in their analysis that the boundary change to the Non-Trawl RCA would likely result in an increase in lingcod, cabezon, other flatfish, minor nearshore, and minor shelf species catch from lat. 36° N to 37°07′ N, while minimizing impacts to quillback rockfish, and reducing catch of vermillion/sunset rockfish to sustainable levels, within that area. The risk of the changes established in this final rule resulting in exceedances of the corresponding harvest limits is low, and the risk to quillback rockfish is minimal, particularly in areas south of lat. 37°07′ N. At the same time, the changes would yield positive economic impacts to commercial non-trawl fishermen that fish in Federal waters in that area. This economic opportunity would not otherwise occur without the Non-Trawl RCA boundary move and the associated trip limit changes. This rule also makes Council recommended changes to regulations pertaining to the California recreational groundfish fishery within federally managed waters, in order to create consistency with current state regulations within California jurisdiction. This is necessary to ensure consistent management and enforcement across the state and federally managed fisheries. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2023–2024 harvest specifications and management measures, which published on December 16, 2022 (87 FR 77007).

Trip limit ratios to cover incidental catch of Pacific halibut in the fixed gear sablefish primary (tier) fishery are set annually, in alignment with the overall allocation for incidental catch in this fishery that is established by NMFS in mid-March of each year. Halibut is internationally managed, with specifications that publish out of sync with groundfish regulations, and therefore measures to account for incidental catch in the sablefish fishery must be updated each year through inseason action. Updating these limits in a timely fashion is a critical conservation need in the West Coast LE sablefish primary (tier) fishery.

Delaying implementation of this rule to allow for public comment would have negative effects on the conservation of California quillback rockfish, which was recently determined to be overfished, as well as the conservation of vermilion/sunset rockfish, whose catch has been unsustainably high in recent years. Delay in implementation would also likely reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry, because it is unlikely the new regulations would publish and could be

implemented in time to realize the projected benefits to fishing communities and the resource. A delay in implementation could also contribute to unnecessarily discarded and largely wasted fish; fish which could otherwise be landed to provide food and revenue, and whose use would assist in the responsible use of the resource. Therefore, providing a comment period for this action could significantly limit the economic benefits to the fishery, and would hamper the achievement of optimum yield from the affected fisheries.

Therefore, the NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect fisheries by increasing opportunity and allowing greater economic benefit. These adjustments were requested by the Council's advisory bodies, as well as by members of industry during the Council's March 2024 meeting, and the changes are recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2023–2024 (87 FR 77007).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Carrie Diane Robinson,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.231, revise paragraph (b)(3)(iv) to read as follows:

* * * * *

(b) * * *

(3) * * *

(iv) Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30′ N lat.). From April 1 through the closure date set by the International Pacific Halibut Commission for Pacific halibut in all commercial fisheries, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N lat.) may possess and land up to 130 lb (59 kg) dressed weight of Pacific halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two additional Pacific halibut in excess of the 130-lbs-per-1,000-lb limit per landing. NMFS publishes the International Pacific Halibut Commission's regulations setting forth annual management measures, including the closure date for Pacific halibut in all commercial fisheries, in the **Federal Register** by March 15 each year, 50 CFR 300.62. ''Dressed'' Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

* * * * *

■ 3. Revise table 2 (South) to part 660, subpart E, to read as follows:

BILLING CODE 3510–22–P

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N lat.
Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 4/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 37°07' N lat.		Shoreward EEZ[1/] - 75 fm line[1/]					
2	37°07' N lat. - 34°27' N lat.		50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.		100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
4	**Minor Slope rockfish[2/] & Darkblotched rockfish**		40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**		40,000 lb/ 2 months					
6	**Sablefish**							
7		40°10' N lat. - 36°00' N lat.	4,500 lb/ week, not to exceed 9,000 lb /2 months					
8		South of 36°00' N lat.	2,500 lb/ week					
9	**Longspine thornyhead**		10,000 lb/ 2 months					
10	**Shortspine thornyhead**							
11		40°10' N lat. - 34°27' N lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12		South of 34°27' N lat.	3,000 lb/ 2 months					
13	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder**		10,000 lb/ month					
14	**Other Flatfish[3/]**							
15		40°10' N lat. - 37°07' N lat.	10,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
16		South of 37°07' N lat.	10,000 lb/ month					
17	**Whiting**		10,000 lb/ trip					
18	**Minor Shelf Rockfish[2/]**							
19		40°10' N lat. - 37°07' N lat.	6,000 lb/ 2 months, of which no more than 500 lb may be vermilion/sunset					
20		37°07' N lat. - 34°27' N lat.	8,000 lb /2 month period, of which no more than 500 lb may be vermilion/sunset					
21		South of 34°27' N lat.	5,000 lb/ 2 months, of which no more than 3,000 lb may be vermilion/sunset					
22	**Widow rockfish**							
23		40°10' N lat. - 34°27' N lat.	10,000 lb/ 2 months					
24		South of 34°27' N lat.	8,000 lb/ 2 months					
25	**Chilipepper rockfish**							
26		40°10' N lat. - 34°27' N lat.	10,000 lb. / 2 months					
27		South of 34°27' N lat.	8,000 lb. / 2 months					
28	**Canary rockfish**		3,500 lb/ 2 months					
29	**Yelloweye rockfish**		CLOSED					
30	**Quillback rockfish**		0 lb/ 2 months					
31	**Cowcod**		CLOSED					
32	**Bronzespotted rockfish**		CLOSED					
33	**Bocaccio**		8,000 lb/ 2 months					
34	**Minor Nearshore Rockfish**							
35	40°10' N lat. - 36° N lat. Shallow nearshore[4/]		0 lb/ 2 months					
36	South of 36° N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					
37	40°10' N lat. - 36° N lat. Deeper nearshore[5/]		0 lb/ 2 months					
38	South of 36° N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be copper rockfish					
39	**California Scorpionfish**		3,500 lb/ 2 months					
40	**Lingcod[6/]**							
41		40°10' N lat. - 37°07' N lat.	1,600 lb / 2 months seaward of the Non-Trawl RCA; 0 lb / 2 months inside the non-trawl RCA					
42		South of 37°07' N lat.	1,600 lb / 2 months					
43	**Pacific cod**		1,000 lb/ 2 months					
44	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
45	**Longnose skate**		Unlimited					
46	**Other Fish[7/]**		0 lb / 2 months					
47	**Cabezon in California**							
48		40°10' N lat. - 36° N lat.	0 lb/ 2 months					
49		South of 36° N lat.	Unlimited					
50	**Big Skate**		Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. LEFG vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 22 inches (56 cm) total length South of 42° N lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Revise table 3 (South) to part 660, subpart F, to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 4/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 37°07' N lat.		Shoreward EEZ[1/] - 75 fm line[1/]					
2	37°07' N lat. - 34°27' N lat.		50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.		100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**		200 lb/ month					
6	**Sablefish**							
7		40°10' N lat. - 36°00' N lat.	3,000 lb/ week, not to exceed 6,000 lb/ 2 months					
8		South of 36°00' N lat.	2,000 lb/ week, not to exceed 6,000 lb/ 2 months					
9	**Shortpine thornyheads**							
10		40°10' N lat. - 34°27' N lat.	50 lb/ month					
11	**Longspine thornyheads**							
12		40°10' N lat. - 34°27' N lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine thornyheads**							
14		South of 34°27' N lat.	100 lb/ day, no more than 1,000 lb/ 2 months					
15	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder[3/8/]**		5,000 lb/ month					
16	**Other Flatfish[3/]**							
17		40°10' N lat. - 37°07' N lat.	5,000 lb/ month seaward of the Non-Trawl RCA; 0 lb/month inside the Non-Trawl RCA					
18		South of 37°07' N lat.	5,000 lb/ month					
19	**Whiting**		300 lb/ month					
20	**Minor Shelf Rockfish[2/]**							
21		40°10' N lat. - 37°07' N lat.	3,000 lb/ 2 months, of which no more than 300 lb may be vermilion/sunset					
22		37°07' N lat. - 34°27' N lat.	4,000 lb/ 2 month, of which no more than 300 lb may be vermilion/sunset					
23		South of 34°27' N lat.	3,000 lb/ 2 months, of which no more than 900 lb may be vermilion/sunset					
24	**Widow rockfish**							
25		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					
26		South of 34°27' N lat.	4,000 lb/ 2 months					
27	**Chilipepper rockfish**							
28		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					
29		South of 34°27' N lat.	4,000 lb/ 2 months					
30	**Canary rockfish**		1,500 lb/ 2 months					
31	**Yelloweye rockfish**		CLOSED					
32	**Cowcod**		CLOSED					
33	**Bronzespotted rockfish**		CLOSED					
34	**Quillback rockfish**		0 lb/ 2 months					
35	**Bocaccio**		6,000 lb/ 2 months					
36	**Minor Nearshore Rockfish**							
37	40°10' N lat. - 36°00' N lat. Shallow nearshore[4/]		0 lb/ 2 months					
38	South of 36°00' N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					
39	40°10' N lat. - 36°00' N lat. Deeper nearshore[5/]		0 lb/ 2 months					
40	South of 36°00' N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be copper rockfish					
41	**California Scorpionfish**		3,500 lb/ 2 months					
42	**Lingcod[6/]**							
43		40°10' N lat. - 37°07' N lat.	700 lb / month seaward of the non-trawl RCA; 0 lb/ month inside the non-trawl RCA					
44		South of 37°07' N lat.	700 lb / month					
45	**Pacific cod**		1,000 lb/ 2 months					
46	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months		100,000 lb/ 2 months	
47	**Longnose skate**		Unlimited					
48	**Big skate**		Unlimited					
49	**Other Fish[7/]**		Unlimited					
50	**Cabezon in California**							
51		40°10' N lat. - 36°00' N lat.	0 lb/ month					
52		South of 36°00' N lat.	Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 4/1/2024

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 36°00' N lat.	Shoreward EEZ[1/] - 75 fm line[1/]					
2	36°00' N lat. - 34°27' N lat.	50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
59	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
60	South of 40°10' N lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40°10' and 34°27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
61	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N lat., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
62	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
63	*40°10' N lat. - 38°00' N lat.*	*100 fm line[1/] - 200 fm line[1/]*		*100 fm line[1/] - 150 fm line[1/]*			*100 fm line[1/] - 200 fm line[1/]*
64	*38°00' N lat. - 34°27' N lat.*	*100 fm line[1/] - 150 fm line[1/]*					
65	*South of 34°27' N lat.*	*100 fm line[1/] - 150 fm line[1/]*					
66		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
67	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
69	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/ day and 1,500 lb/ trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/ trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 22 inches (56 cm) South of 42° N lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

■ 5. In § 660.360, revise paragraphs (c)(3)(i)(A)(*1*) through (*5*), (c)(3)(ii)(A)(*1*) through (*5*), (c)(3)(ii)(B), and (c)(3)(iii)(A)(*1*) through (*5*) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) * * *

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for the RCG Complex and lingcod is closed in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31.

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for the RCG Complex and lingcod is closed from in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31.

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for the RCG Complex and lingcod is closed in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of

the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31. Closures around Cordell Bank (see paragraph (c)(3)(i)(C) of this section) also apply in this area.

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area),

(*i*) Between 37°11′ N lat. and 36° N lat., recreational fishing for the RCG Complex and lingcod is closed in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31.

(*ii*) Between 36° N lat. and 34°27′ N lat., recreational fishing for the RCG Complex and lingcod is closed from January 1 through March 31, is open at all depths from April 1 through June 30; is prohibited in the EEZ seaward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from July 1 through September 30, and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through December 31.

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through March 31, open at all depths from April 1 through June 30; is prohibited in the EEZ seaward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from July 1 through September 30, and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through December 31.

* * * * *

(ii) * * *

(A) * * *

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for the RCG Complex and lingcod is closed in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31.

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for the RCG Complex and lingcod is closed from in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31.

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for the RCG Complex and lingcod is closed in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31. Closures around Cordell Bank (see paragraph (c)(3)(i)(C) of this section) also apply in this area.

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area),

(*i*) Between 37°11′ N lat. and 36° N lat., recreational fishing for the RCG Complex and lingcod is closed in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31.

(*ii*) Between 36° N lat. and 34°27′ N lat., recreational fishing for the RCG Complex and lingcod is closed from January 1 through March 31, is open at all depths from April 1 through June 30; is prohibited in the EEZ seaward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from July 1 through September 30, and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through December 31.

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through March 31, open at all depths from April 1 through June 30; is prohibited in the EEZ seaward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts

from July 1 through September 30, and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through December 31.

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of two hooks and one line when fishing for the RCG complex. The bag limit is 10 RCG Complex fish per day coastwide, with a sub-bag limit of 4 fish for vermilion rockfish between 42° N lat. and 40°10 N lat., a sub-bag limit of 2 fish for vermilion/sunset rockfish south of 40°10 N lat., and 1 fish for copper rockfish. These sub-bag limits count towards the bag limit for the RCG Complex and are not in addition to that limit. Retention of yelloweye rockfish, bronzespotted rockfish, quillback rockfish, and cowcod is prohibited. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the value of days in the fishing trip.

* * * * *

(iii) * * *

(A) * * *

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for lingcod in the EEZ is open from April 1 through April 30, October 1 through October 31, and December 1 through December 31 (*i.e.,* recreational fishing for lingcod in the EEZ is closed from January 1 through March 31, May 1 through September 30, and November 1 through November 30).

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for lingcod in the EEZ is open from April 1 through April 30, October 1 through October 31, and December 1 through December 31 (*i.e.,* recreational fishing for lingcod in the EEZ is closed from January 1 through March 31, May 1 through September 30, and November 1 through November 30).

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for lingcod in the EEZ is open from April 1 through April 30, October 1 through October 31, and December 1 through December 31 (*i.e.,* recreational fishing for lingcod in the EEZ is closed from January 1 through March 31, May 1 through September 30, and November 1 through November 30).

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area),

(*i*) Between 37°11′ N lat. and 36° N lat., recreational fishing for lingcod in the EEZ is open from April 1 through April 30, October 1 through October 31, and December 1 through December 31 (*i.e.,* recreational fishing for lingcod is closed in the EEZ from January 1 through March 31, May 1 through September 30, and November 1 through November 30).

(*ii*) Between 36° N lat. and 34°27′ N lat., recreational fishing for lingcod in the EEZ is open from April 1 through December 31 (*i.e.,* recreational fishing for the lingcod in the EEZ is closed from January 1 through March 31).

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for lingcod in the EEZ is open from April 1 through December 31 (*i.e.,* recreational fishing for lingcod in the EEZ is closed from January 1 through March 31).

* * * * *

[FR Doc. 2024–06775 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 240229–0063]

RIN 0648–BL80

Fisheries Off West Coast States; Emergency Action To Temporarily Modify Continuous Transit Limitations for California Recreational Vessels

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule temporarily modifies a continuous transit requirement for California recreational vessels. This modification will temporarily allow recreational vessels to anchor overnight and/or stop to fish for non-groundfish species inside the seasonal Recreational Rockfish Conservation Area off the coast of California, also known as the 50-fathom (91-meter) offshore fishery. This emergency measure will prevent the possible cancellation of thousands of recreational fishing trips during the 2024 recreational fishing season off California.

DATES: Effective April 1, 2024 until September 30, 2024. Comments must be submitted by May 1, 2024.

ADDRESSES:

Electronic Access

This emergency rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov/*. The continuing environmental effects of the California recreational fishery were previously considered under the *Environmental Assessment for Amendment 30 to the Pacific Coast Groundfish Fishery Management Plan, 2023–2024 Harvest Specifications, and Management Measures.* This document is available on the NMFS West Coast Region website at: *https://www.fisheries.noaa.gov/species/west-coast-groundfish.html*.

FOR FURTHER INFORMATION CONTACT: Lynn Massey, phone: 562–900–2060, or email: *lynn.massey@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish fishery in the U.S. exclusive economic zone (EEZ) seaward of Washington, Oregon, and California is managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) developed the Pacific Coast Groundfish FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*. The Secretary of Commerce approved the Pacific Coast Groundfish FMP and implemented the provisions of the plan through Federal regulations at 50 CFR part 660, subparts C through G. Species managed under the Pacific Coast Groundfish FMP include more than 90 species of roundfish, flatfish, rockfish, sharks, and skates.

The recreational fishery sector off the California coast benefits the economy through tourism, bait and tackle sales, and other commerce that brings income to California coastal fishing communities. NMFS, the Council, and the California Department of Fish and Wildlife (CDFW) manage recreational fisheries within five districts: the Northern Management Area between 42° North latitude (N lat.) and 40°10′ N lat., the Mendocino Management Area between 40°10′ N lat. and 38°57.50′ N lat., the San Francisco Management Area between 38°57.50′ N lat. and 37°11′ N lat., the Central Management Area between 37°11′ N lat. and 34°27′ N lat., and the Southern Management Area between 34°27′ N lat. and the U.S./Mexico border. The California recreational groundfish fishery primarily targets lingcod, nearshore rockfish, and shelf rockfish with hook-and-line gear. Primary catch controls for this fishery include season dates, depth closures, bag limits, and area closures, all of which are tools used to keep catch

within state-specific quotas and Federal annual catch limits.

At its September 2023 meeting, the Council recommended the immediate use of an available management measure known as the ''offshore fishery'' that would prohibit California recreational fishing vessels from fishing shoreward of the Recreational Rockfish Conservation Area (RCA) line (*i.e.,* the 50 fathom (fm, 91 meter (m))) depth contour for the remainder of 2023. NMFS implemented this recommendation on October 2, 2023 (88 FR 67656); the extended season structure of the California recreational offshore fishery is in place until changed, so applies to 2024 and beyond. The purpose of the Council's proposed action was to protect nearshore-dwelling quillback rockfish, a species that was declared overfished by NMFS in December 2023. The continuous transit aspect of the management measure (see 50 CFR 660.360(c)(3)(i)(a)) prohibits recreational vessels from stopping or loitering in a closed area; thus, here, vessels must be continuously transiting when shoreward of the 50 fm (91 m) depth contour specified in 50 CFR 660.72, which is typically on their way back to port after fishing in Federal waters. NMFS implemented the offshore fishery and associated continuous transit requirement off of California to protect quillback rockfish on October 2, 2023 (88 FR 67656, October 2, 2023). NMFS's action was consistent with a California state action implemented on August 21, 2023, that similarly enacted an ''offshore only'' fishery for state managed waters (see *https://www.wildlife.ca.gov/Notices/Regulations/Rockfish*).

At the time the Council and its advisory bodies began discussing the use of the offshore fishery management measure, the Council's Groundfish Advisory Subpanel (GAP) voiced concerns that the continuous transit requirement that would take effect off the coast of California, in addition to similar transit rules that were applicable in California state waters at the time, would prevent recreational vessels from: (1) anchoring shoreward of 50 fm (91 m) overnight (for safety reasons or planned on multi-day charter trips) and (2) anchoring to fish for non-groundfish species (*e.g.,* lobster with traps) shoreward of 50 fm (91 m), which was not expected to impact quillback rockfish. The GAP members asserted that the lack of ability to do these activities could create significant safety-at-sea concerns and could force charter companies to cancel fishing trips that typically offer a variety of target species, both groundfish and non-groundfish.

As described in the 2023–2024 groundfish specifications rulemaking (87 FR 62676, October 14, 2022), participating in an offshore fishery requires substantially more transit time and fuel costs. Increased transit time reduces the time available for fishing, which reduces the overall possible catch. Multi-day trips can partially mitigate the economic costs of the offshore fishery, and to do so, anchoring overnight is a necessity. The current regulation requires vessels to remain seaward of 50 fathoms (91 m) if recreational groundfish fishing has already occurred, which can restrict anchoring location options and could create safety concerns.

Additionally, in the 2023–2024 groundfish specifications biennium, there have been several constraining groundfish species in the recreational fisheries. See 87 FR 62676 (October 14, 2022) (discussing constraints due to Copper rockfish and quillback rockfish); 88 FR 67656 (October 2, 2023) (discussing constraints due to vermilion/sunset rockfish). Recreational bag limits and seasons have changed substantially compared to previous biennium, which has augmented the value for recreational fishery participants to be able to take multi-target trips and have the flexibility to seek both groundfish and non-groundfish targets.

The GAP therefore asked the Council to make changes to the regulations within the upcoming 2025–26 harvest specifications rulemaking package that would allow recreational vessels to anchor and fish for non-groundfish species even when an offshore fishery management measure was in effect. They also expressed an urgent need for this issue to be addressed immediately, as the 2025–26 harvest specifications and management measures action will not be in place until 2025 and thus would not address the issue for the 2024 fishing season. CDFW took emergency state action to address these concerns in state waters, with the new regulations going into effect on October 30, 2023 (see *https://www.wildlife.ca.gov/Notices/Regulations/Rockfish*).

If not addressed for the 2024 fishing season, recreational vessels off California would not be able to legally anchor in Federal waters inside the recreational RCA, which would restrict the option of conducting multi-day trips and/or multi-target trips. During the 2022 fishing season, CDFW estimated that approximately 6,936 multi-day groundfish trips and 20,320 groundfish/non-groundfish combination fishing trips, respectively, occurred across both the party charter and private/rental sectors. These trip numbers are considered minimum estimates, as data to inform the number of multi-day trips and groundfish/non-groundfish combination trips is limited. Without action to modify the continuous transit requirement, recreational fishery participants would have a much narrower suite of trip types and target types available, which may not provide enough incentive for trips to occur given higher transit times and fuel costs to go farther offshore. As noted above, there are currently multiple constraining groundfish species that have resulted in reduced recreational fishing seasons and reduced fishing targets (*e.g.,* bag limits). If overall recreational fishing trips are greatly reduced, fishery participants and fishing communities in California will potentially see substantial economic losses.

Emergency Measures

In Federal waters, addressing this request would require a modification to 50 CFR 660.360(c)(3)(i)(a) that requires recreational vessels to continuously transit while shoreward of the RCA boundary. Under this emergency measure, for 180 days after the publication of this emergency rule, recreational vessels in California would be allowed to stop and/or anchor in Federal waters shoreward of the Recreational RCA line but would not be able to deploy groundfish recreational gear inside the recreational RCA. Therefore, this action would not create any new risks of quillback rockfish mortality (assuming full compliance with the prohibition to fish for groundfish shoreward of 50 fm (91 m)). To provide the needed relief, a change to this requirement must be in place before April 1, 2024, when the recreational fishery opens in the Southern management area off of California (the season opens between May 1 and May 15 in the remaining management areas). Hook-and-line gear is the primary gear type used by recreational vessels to target groundfish; therefore, prohibiting its deployment while inside the recreational RCA would enforce the modified transit provisions while still allowing vessels to use other gear types for non-groundfish fishing (*e.g.,* traps for lobster or hoop nets for bait fish). This emergency rule would not change any other elements of the California recreational fishery.

Emergency Action Authority

Section 305(c) of the Magnuson-Stevens Act authorizes the Secretary of Commerce to implement emergency regulations to address fishery

emergencies. NMFS policy guidelines for the use of emergency rules define criteria for determining whether an emergency exists under section 305(c) of the Magnuson-Stevens Act (62 FR 44421, August 21, 1997). Under NMFS' Policy Guidelines for the Use of Emergency Rules, the phrase ''an emergency exists involving any fishery'' is defined as a situation that meets the following three criteria:

1. Results from recent, unforeseen events or recently discovered circumstances;

2. Presents serious conservation or management problems in the fishery; and

3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

In addition, the Magnuson-Stevens Act section 305(c)(3) can allow for an extension of an emergency rule for an additional 186 days if the public has had the opportunity to comment and, in the case of a Council recommendation for emergency regulations or interim measures, the council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis.

Rationale

Under Amendment 31 to the FMP, California quillback rockfish off California was determined to be a stock in need of conservation and management (88 FR 78677, November 16, 2023). California quillback rockfish was declared overfished on December 14, 2023. In the interim while a rebuilding plan is developed, the Council, CDFW, and NMFS implemented several inseason measures in 2023 to modify the regulations for the California recreational and commercial fisheries in Federal and state waters to limit the mortality of quillback rockfish. At the time of the creation of the offshore fishery concept in the 2023–2024 groundfish harvest specifications and management measures action (87 FR 77007, December 16, 2022), it was unforeseen how much of the recreational fishing season would need to be prosecuted via the offshore fishery based on quillback rockfish mortality. The level of allowable catch of this stock is at an unprecedented low level and very little information is available to determine the projected success of various catch and effort controls to such a low target. Recreational catch data in the fall of 2023 indicated immediate action was necessary to move the recreational fishery offshore.

In this first use of the offshore fishery, which occurred earlier in the season than expected, the full extent of the continuous transit issue was discovered. It was unforeseen how an extended fishing season in the offshore fishery coupled with a continuous transit requirement would negatively impact the recreational fishery. Having a substantial portion of the California recreational fishery take place offshore coupled with the continuous transit requirement presents a serious management problem for the fishery by reducing the types of recreational fishing trips that could be prosecuted in light of multiple fishery restrictions. With fewer options for groundfish recreational fishing trips, fishery participants may determine the economic costs are not worth the value of the trip, which would reduce the economic benefits of recreational fishing flowing through fishing communities. Because the modification in this emergency rule would still prohibit groundfish recreational gear from being deployed shoreward of the recreational RCA, there are no expected additional impacts to quillback rockfish mortality (assuming full compliance with the prohibition to fish for groundfish shoreward of 50 fm (91 m)). The non-groundfish targets that may be included in a multi-target recreational trip are not known to catch quillback rockfish.

The continuous transit requirement can be addressed with an emergency rule to alleviate negative economic impacts for the 2024 fishing season. Other action pathways, such as an inseason action, were not available because continuous transit is not designated as a routine management measure appropriate for the processes laid out in § 660.60. The urgent need for a temporary modification to mitigate substantial economic costs outweighs the benefit of advance public notice and public comment. In light of best available information, the status of the recreational fishery off of California, and the potential social and economic costs of maintaining the existing continuous transit requirement, NMFS finds that an emergency exists, and regulations are necessary to address the emergency.

Renewal of Emergency Regulations

The Magnuson-Stevens Act limits NMFS's emergency action authority to an initial period of 180 days, with a potential extension up to an additional 186 days, if warranted. The public has an opportunity to comment on the initial emergency action (see **ADDRESSES**). After considering public comments on this emergency rule, NMFS may take action to extend the emergency measures before expiration.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the Pacific Coast Groundfish FMP, section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds prior notice and public comment is not required because it would be impracticable and contrary to the public interest. This rule must be in place by the start of the recreational fishing season, which is April 1, 2024, for the Southern Management Area. Therefore, delaying the implementation of this emergency rule would cause the recreational fishing season to start in this management area without modified transit provisions in place. Modifying the continuous transit requirement for California recreational vessels would not pose a conservation risk; it would allow recreational vessels to continue to utilize multi-day and multi-target trips even when the offshore fishery is in place. The impacts of the California recreational fisheries have been prior analyzed in the *EA for Amendment 30 to the Pacific Coast Groundfish Fishery Management Plan, 2023–2024 Harvest Specifications, and Management Measures.*

Additionally, this rule is excepted from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it relieves a restriction that would otherwise place California recreational vessels at an economic disadvantage in 2024. Immediate implementation of this rule is necessary to prevent the possible cancellation of thousands of fishing trips that could otherwise occur if not for the current continuous transit requirement.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

The Regulatory Flexibility Act does not apply to this emergency rule because prior notice and opportunity for public comment is not required.

This emergency/interim rule contains no information collection requirements under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Fishing vessels.

Dated: February 29, 2024.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.360, add paragraph (c)(3)(i)(A)(*6*) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) * * *

(*6*) Emergency rule revising continuous transit requirement. Effective April 1, 2024 until September 30, 2024, notwithstanding any other section of these regulations, in times and areas where a recreational RCA is closed shoreward of a recreational RCA line (*i.e.,* when an ''off-shore only'' fishery is active in that management area) vessels may stop, anchor in, or transit through waters shoreward of the recreational RCA line so long as they do not have any hook-and-line fishing gear in the water.

* * * * *

[FR Doc. 2024–04965 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 63
Monday, April 1, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0765; Project Identifier MCAI–2022–00981–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model EC130B4 and EC130T2 helicopters. This proposed AD was prompted by the determination that fatigue cracks may develop at the root section of certain tail rotor blades (TRBs). This proposed AD would require repetitively fluorescent penetrant inspecting those TRBs and, depending on the results, accomplishing corrective action. This proposed AD would also prohibit installing certain TRBs unless certain actions are accomplished. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 May 16, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0765; 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 EASA material identified in this NPRM, 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 the EASA material on the EASA website *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2024–0765.

Other Related Service Information: For Airbus Helicopters service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or website *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (206) 231–3536; email *joe.salameh@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–2024–0765; Project Identifier MCAI–2022–00981–R'' 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 Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (206) 231–3536; email *joe.salameh@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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0150, dated July 21, 2022 (EASA AD 2022–0150), to correct an unsafe condition on all Airbus Helicopters Model EC 130 B4 and EC 130 T2 helicopters.

This proposed AD was prompted by the determination that fatigue cracks may develop at the root section of certain part-numbered TRBs. The FAA is proposing this AD to address fatigue cracks on a TRB, which if not detected

and corrected, may lead to crack propagation and consequent TRB failure, possibly resulting in loss of control of the helicopter.

You may examine EASA AD 2022–0150 in the AD docket at *regulations.gov* under Docket No. FAA–2024–0765.

Related AD

AD 2021–10–25, Amendment 39–21558 (86 FR 29176, June 1, 2021) (AD 2021–10–25) applies to certain Airbus Helicopters Model EC130B4 and EC130T2 helicopters. AD 2021–10–25 requires cleaning the TRBs, visual and dye penetrant inspections for cracks in the TRBs, a dimensional inspection to verify conformity of the TRB, and corrective actions if necessary. The FAA issued AD 2021–10–25 to address geometrical non-conformities of the TRBs, which could lead to crack initiation and consequent blade failure, and possible loss of control of the helicopter. AD 2021–10–25 was prompted by EASA AD 2020–0187, dated August 21, 2020.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0150 requires repetitively dye penetrant inspecting certain part-numbered TRBs for cracking and, depending on the results, replacing the TRB with a serviceable TRB. Also, EASA AD 2022–0150 prohibits installing certain TRBs on any helicopter unless its requirements are met.

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.

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. EC130–05A041, Revision 0, dated July 7, 2022. This service information specifies procedures for inspecting certain part-numbered TRBs for cracks with dye penetrant.

The FAA also reviewed Airbus Helicopters ASB No. EC130–05A033, Revision 1, dated February 9, 2021. This service information specifies procedures for inspecting certain part-numbered TRBs for cracks and accomplishing dimensional measurements of the distance from the drain hole axis to the shoulder, rib thickness, and remaining thickness of each TRB.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0150, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA 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 2022–0150 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0150 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 2022–0150 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 2022–0150. Service information referenced in EASA AD 2022–0150 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0765 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2022–0150 requires accomplishing dye penetrant inspections, whereas this proposed AD would require fluorescent penetrant inspections accomplished by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 275 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Fluorescent penetrant inspecting a TRB would take about 1 work-hour for an estimated cost of up to $850 per helicopter (up to 10 affected TRBs per helicopter) and $233,750 for the U.S. fleet, per inspection cycle. Replacing a TRB would take about 4 work-hours and parts would cost about $4,175 for an estimated cost of $4,515 per TRB.

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 adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2024–0765; Project Identifier MCAI–2022–00981–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 16, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC130B4 and EC130T2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by the determination that fatigue cracks may develop at the root section of a tail rotor blade (TRB). The FAA is issuing this AD to address fatigue cracks on a TRB. The unsafe condition, if not addressed, could result in crack propagation, TRB failure, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0150, dated July 21, 2022 (EASA AD 2022–0150).

(h) Exceptions to EASA AD 2022–0150

(1) Where EASA AD 2022–0150 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0150 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2022–0150 states to, ''accomplish a dye penetrant inspection of that affected part in accordance with the instructions of the ASB;'' for this AD, replace that text with, ''accomplish a fluorescent penetrant inspection (FPI) of that affected part. This FPI must be accomplished by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.''

Note 1 to paragraph (h)(3): Advisory Circular 65–31B contains examples of FAA-acceptable Level II and Level III qualification standards criteria for inspection personnel doing nondestructive test inspections.

(4) Instead of complying with paragraph (2) of EASA AD 2022–0150, for this AD, comply with the following: ''As a result of the inspection required by paragraph (1) of EASA AD 2022–0150, if there is a crack, before further flight, remove the affected part, as defined in EASA AD 2022–0150, from service and replace it with a serviceable part, as defined in EASA AD 2022–0150.''

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0150.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0150 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits are prohibited if there is a crack in a TRB.

(k) Alternative Methods of Compliance (AMOCs)

(1) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (206) 231–3536; email *joe.salameh@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0150, dated July 21, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0150, 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 the EASA material on the EASA website *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on March 20, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06731 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0770; Project Identifier MCAI–2024–00039–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) 2022–19–02, which applies to all Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes; and Model A330–841 and A330–941 airplanes. AD 2022–19–02 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022–19–02, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2022–19–02 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, 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 May 16, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0770; 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 identified in this NPRM, 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.*
- You may view this material that is incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2024–0770.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3229; email: *vladimir.ulyanov@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–2024–0770; Project Identifier MCAI–2024–00039–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 Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3229; email: *vladimir.ulyanov@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 issued AD 2022–19–02, Amendment 39–22171 (87 FR 68891, November 17, 2022) (AD 2022–19–02), for certain Model A330–201, –202, –203, –223, and –243 airplanes; Model A330–223F and –243F airplanes; Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A330–841 and A330–941 airplanes. AD 2022–19–02 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0250, dated November 17, 2021 (EASA 2021–0250) (which corresponds to FAA AD 2022–19–02), to correct an unsafe condition.

AD 2022–19–02 requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2022–19–02 to address the failure of system components, which could reduce the controllability of the airplane.

Actions Since AD 2022–19–02 Was Issued

Since the FAA issued AD 2022–19–02, EASA superseded AD 2021–0250 and issued EASA AD 2024–0014, dated January 10, 2024 (EASA AD 2024–0014) (also referred to as the MCAI), for all Airbus SAS A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–841, and A330–941 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after July 1, 2021, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0770.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0014. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2021–0250, dated November 17, 2021, which the Director of the Federal Register approved for incorporation by reference as of December 22, 2022 (87 FR 68891, November 17, 2022).

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 **ADDRESSES**.

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 this 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 retain all requirements of AD 2022–19–02. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2024–0014 already described, as proposed for incorporation by reference. Any differences with EASA AD 2024–0014 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) 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 2024–0014 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0014 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 2024–0014 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 2024–0014. Service information required by EASA AD 2024–0014 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0770 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 140 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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) 2022–19–02, Amendment 39–22171 (87 FR 68891, November 17, 2022); and
■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–0770; Project Identifier MCAI–2024–00039–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 16, 2024.

(b) Affected ADs

This AD replaces AD 2022–19–02, Amendment 39–22171 (87 FR 68891, November 17, 2022) (AD 2022–19–02).

(c) Applicability

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (5) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 2, 2023.

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

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

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

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the failure of system components. The unsafe condition, if not addressed, could reduce the controllability of the airplane.

(f) Compliance

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

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

This paragraph restates the requirements of paragraph (o) of AD 2022–19–02, with no changes. 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 2021–0250, dated November 17, 2021 (EASA AD 2021–0250). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0250, With No Changes

This paragraph restates the exceptions specified in paragraph (p) of AD 2022–19–02, with no changes.

(1) Where EASA AD 2021–0250 refers to its effective date, this AD requires using December 22, 2022 (the effective date of AD 2022–19–02).

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

(3) Paragraph (3) of EASA AD 2021–0250 specifies to ''revise the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after December 22, 2022 (the effective date of AD 2022–19–02).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0250 is at the applicable ''limitations and associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0250, or within 90 days after December 22, 2022 (the effective date of AD 2022–19–02), whichever occurs later.

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

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

(i) Retained Restrictions on Alternative Actions, and Intervals With No Changes

This paragraph restates the requirements of paragraph (q) of AD 2022–19–02, with no changes. Except as specified in paragraph (j) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0250.

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

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2024–0014, dated January 10, 2024 (EASA AD 2024–0014). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2024–0014

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2022–0014.

(2) Paragraph (3) of EASA AD 2024–0014 specifies revising ''the AMP,'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2024–0014 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (3) of EASA AD 2024–0014, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2024–0014.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2024–0014.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2024–0014.

(m) 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 manager of the International Validation Branch, mail it to the address identified in paragraph (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (m)(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.

(n) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3229; email: *vladimir.ulyanov@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2024–0014, dated January 10, 2024.

(ii) [Reserved]

(4) The following service information was approved for IBR on December 22, 2022 (87 FR 68891, November 17, 2022).

(i) EASA AD 2021–0250, dated November 17, 2021.

(ii) [Reserved]

(5) For EASA AD 2024–0014 and EASA AD 2021–0250, 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.*

(6) You may view this material that is incorporated by reference 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.

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

Issued on March 22, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06678 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2474; Airspace Docket No. 23–ASO–56]

RIN 2120–AA66

Amendment of Class E Airspace; Fayetteville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Fayetteville Regional/Grannis Field, Fayetteville, NC, by replacing the reference to decommissioned non-directional beacon (Pope NDB), removing reference to decommissioned Simmons Very High-Frequency Omnidirectional Range (VOR), and updating the airports' geographic coordinates and names. This action would not change the airspace boundaries or operating requirements.

DATES: Comments must be received on or before May 16, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2474 and Airspace Docket No. 23–ASO–56 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* anytime. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Justin T. Rhodes, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5478.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and

5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except on federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next FAA Order JO 7400.11 update. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending from 700 feet above the surface for Fayetteville Regional/Grannis Field, Fayetteville, NC by replacing reference to decommissioned non-directional beacon (Pope NDB) with reference to a co-located Point in Space, removing reference to Simmons Very High-Frequency Omnidirectional Range (VOR), and updating the airports' geographic coordinates to coincide with FAA's database and names (formerly ''Fayetteville Regional/Grannis Field Airport, NC'' and ''Pope AFB''). This action would not change the airspace boundaries or operating requirements.

The Class E airspace description formatting and punctuation would be amended in accordance with the FAA Order 7400.2.

Controlled airspace is necessary for the area's safety and management of instrument flight rules (IFR) operations.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis per FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' before any final regulatory action by the FAA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Fayetteville, NC [Amended]

Fayetteville Regional/Grannis Field, NC
(Lat. 34°59′28″ N, long. 78°52′49″ W)
Pope AAF
(Lat. 35°10′15″ N, long. 79°00′52″ W)
Point In Space
(Lat. 35°13′37″ N, long. 78°57′16″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Fayetteville Regional/Grannis Field within a 10-mile radius of Pope AAF and 2.4 miles each side a 085° bearing from a point in space, lat 35°13′37″ N, long 78°57′16″ W, extending from the Fayetteville and Pope 10-mile radii to 7 miles east of said point; and within 8 miles northwest and 4 miles southeast of the Pope AAF ILS localizer northeast course, extending from the 10-mile radius to 18 miles northeast of the Point in Space.

* * * * *

Issued in College Park, Georgia, on March 26, 2024.

Patrick Young,

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

[FR Doc. 2024–06787 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2023–0438, FRL–11366–01–R10]

Air Plan Approval; OR; Permitting Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve revisions to the Oregon State Implementation Plan (SIP) submitted on March 27, 2023. The submitted changes are designed to strengthen the stationary source permitting rules by eliminating generic plant site emission limits in favor of source-specific and source-category specific limits, updating construction notification requirements, clarifying the use of modeling and monitoring for compliance assurance, and streamlining the application process.

DATES: Comments must be received on or before May 1, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2023–0438, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For

additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

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

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

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I. Background

A. State Implementation Plan

The Clean Air Act requires the EPA to establish national ambient air quality standards (NAAQS) for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide.[1] Each state has a State Implementation Plan (SIP) designed to meet the NAAQS through various air pollution regulations, control measures and strategies. A SIP contains elements such as emission limits, pollution control technology requirements, permitting programs, and enforcement mechanisms, among other elements. Each state revises its SIP over time to respond to new Federal requirements and to address changing air quality conditions.

States submit SIP revisions to the EPA for review and approval.[2] The EPA takes action through notice and comment rulemaking to approve and incorporate submitted state air quality regulations by reference into the SIP, codified in the Code of Federal Regulations (CFR). As part of the SIP, state regulations are enforceable by the EPA and by citizens in Federal district court.[3]

B. State Submission

On March 27, 2023, the Oregon Department of Environmental Quality (DEQ) submitted a SIP revision to the EPA for approval into the Oregon SIP, codified at 40 CFR part 52, subpart MM. The submitted changes, State effective March 1, 2023, update the stationary source permitting programs established in chapter 340 of the Oregon Administrative Rules (OAR). The Oregon Department of Environmental Quality (Oregon DEQ) is the permitting authority throughout the State, except where Lane Regional Air Protection Agency has been authorized to permit sources located in Lane County, Oregon.

II. Evaluation

The following sections of this preamble describe the significant changes made to the Oregon air permitting regulations and evaluate the changes with respect to Clean Air Act requirements.[4]

A. Division 200—General Air Pollution Procedures and Definitions

Oregon clarified and updated several centralized definitions which are used throughout the Oregon air quality regulations.[5] The State updated the definition of ''air contaminant'' to clearly exclude uncombined water.[6] This update is appropriate because: (1) *uncombined water is not a criteria pollutant or otherwise regulated air pollutant under the Clean Air Act; and (2) uncombined water is not included when measuring particulate matter emissions,* consistent with the EPA's definition *at 40 CFR 51.100(pp).* Oregon also made clear that the definition of ''construction'' includes the replacement of a source and that the definition of ''emission limit'' includes a permit condition or order. These changes are appropriate because they strengthen and clarify the SIP.

The State also made minor updates to certain terms; for example, Oregon clarified that all fluorinated greenhouse gases, as defined in 40 CFR part 98, are included in the State's definition of ''greenhouse gas.'' Oregon updated the definition of ''major source'' to ensure that all uses of the term throughout the air quality rules point to the corresponding definition based on the applicable permitting program (the Clean Air Act defines the term ''major source'' differently based on area designation, type of pollutant, etc.). In addition, the State clarified the correct definition of ''particulate matter'' to be used in regulating visible emissions. Oregon also updated the definition of ''significant emission rate'' to point to the EPA test method used to measure inorganic fluoride compounds and updated the definition of ''VOC'' to align with the Federal definition in 40 CFR 51.100(s). We propose to approve these clarifying updates.

Oregon revised the definition of ''significant impact level'' to remove the levels established for the coarse particulate matter (PM_{10}) annual standard. This change is consistent with the EPA's revocation of the PM_{10} annual standard on October 17, 2006 (71 FR 61144). Finally, Oregon struck the definition of ''generic plant site emission limit'' because the State has repealed the permitting regulations in which the term is used. For further discussion, please see section II.G. of this preamble. We propose to approve the removal of these obsolete terms and definitions.

B. Division 208—Visible Emissions and Nuisance Requirements

Oregon updated the visible emission regulations in Division 208 in several ways. Oregon spelled out that the visible emission limits in OAR 340–208–0110 do not apply to recovery furnaces that are subject to the separate standards for wood products industries established in Division 234. In the same rule section, the State removed text that historically served to phase in tighter, 20 percent opacity limits. The limits are now widely applicable. In addition, Oregon clarified that, in and around the Portland area, industrial fuel burning equipment that fires wood residue is limited to no more than 0.10 grains per

[1] See Clean Air Act section 109.

[2] See Clean Air Act section 110.

[3] See Clean Air Act section 304.

[4] We note that we have not described minor wording changes and clarifications that do not alter the meaning of the rules. We also note that we intend to address the submitted changes to Division 214, related to stationary source reporting requirements, in a separate action.

[5] See OAR 340–200–0020 General Air Quality Definitions.

[6] Uncombined water means droplets of water that have not combined with hygroscopic particles or do not contain dissolved solids.

standard cubic foot of exhaust.[7] We propose to approve the submitted changes because they clarify how and where visible emission limits apply without relaxing the requirements.

C. Division 209—Public Participation

In the submission, the State updated the centralized public participation requirements in Division 209. Oregon revised OAR 340–209–0080 to spell out the timeline and actions required for an owner or operator to appeal a permit decision, specifically adding text stating that an issued permit is effective on the date of signature, unless the applicant requests a hearing to contest the permit within 20 days of the notification date. In addition, Oregon made clear that a permit denial is effective 60 days from the notification date unless the applicant requests a hearing within that timeframe. We propose to approve the changes because they make the permit appeal process transparent to applicants and the public.

D. Division 210—Stationary Source Notification Requirements

In the submission, Oregon made changes to the registration requirements in Division 210. The current SIP requires that any air contaminant source that is not otherwise required to obtain an air contaminant discharge permit under Division 216, or title V operating permit under Division 218, must register with the permitting authority upon request. The State updated the general registration provisions in OAR 340–210–0100 to make clear to owners and operators of subject sources that appropriate record-keeping is required and that failure to pay fees may be cause to terminate registration.[8] We propose to approve the submitted changes because they clarify what is required to maintain source registration and therefore strengthen the SIP.

In the submission, the State also made changes to the notice of construction provisions in Division 210. An owner or operator of a proposed new source that will emit any regulated air pollutant, and that is not otherwise required to obtain an air contaminant discharge permit under Division 216 or a title V permit under Division 218, must notify the permitting authority, consistent with Division 210. In addition, an owner or operator seeking to modify an existing source must notify the permitting authority if the modification would increase regulated air pollutant emissions, replace an emissions device, or modify or replace an air pollution control device. We note that such a modifying source may or may not have an existing air contaminant discharge permit or title V permit.

In the submission, Oregon revised the applicability requirements in OAR 340–210–0205 to make clear that owners or operators must notify the permitting authority using the appropriate application materials before undertaking any of the covered activities in Division 210. We propose to approve the changes as strengthening the SIP.

The State also added language to OAR 340–210–0225 to clarify which kinds of changes fall under each notification type prescribed in the Division 210 rules (Types 1, 2, 3 and 4), in addition to the associated requirements for owners and operators under each type. Type 1 changes generally consist of construction and modification for which an owner or operator is not required to obtain an air contaminant discharge permit or permit modification under Division 216, and where the changes would not increase emissions in a significant way, would not increase emissions above an existing plant site emission limit (PSEL), and would not be used to establish a federally enforceable limit on potential to emit.[9] A construction or modification may also be a Type 1 change if it is one of a list of equipment, units, or activities that are expected to result in little to no change in emissions.[10] Type 2 changes include construction or modification for which the owner or operator is not required to obtain an air contaminant discharge permit or permit modification under Division 216, and where the construction or modification *would not* cause or increase emissions above certain regulatory thresholds, such as the significant emission rate.[11] Type 3 changes include construction or modification where the construction or modification *would* cause or increase emissions above certain regulatory thresholds, such as the significant emission rate.[12] Finally, Type 4 changes include construction or modification that is subject to new source review (NSR) requirements governed by Division 224. We propose to approve the changes because they are designed to ensure that construction activities receive the proper review by the permitting authority.

Oregon also revised the application requirements in OAR 340–210–0230 to specify what should be in a notice of construction application and to require that applicants must generally use the State-provided online electronic forms. In addition, applications must include information on production, throughput, material usage, and emissions with supporting calculations. Any person proposing a Type 2 or Type 3 change for a new or replaced device or activity must also submit an air quality analysis, for any pollutants that are emitted above the de minimis emission level, demonstrating that the emissions from the individual device or activity, including reductions due to air pollution control devices or permitted limits on production capacity, will not

[7] If installed, constructed or last modified after June 1, 1970. Such equipment installed before that date is limited to 0.20 grains per standard cubic foot.

[8] Registered sources include sources such as motor vehicle surface coating operations, dry cleaners using perchloroethylene, and other types of smaller sources. Registering such sources helps the Oregon DEQ inventory statewide emissions, provide technical assistance, and communicate with owners and operators.

[9] More specifically, the construction or modification would: have emissions from any new, modified, or replaced device or activity, or any combination of devices or activities, of less than or equal to the de minimis levels defined in OAR 340–200–0020; not result in an increase of emissions from the source above any PSEL; not result in an increase of emissions from the source above the netting basis by more than or equal to the SER; not be used to establish a federally enforceable limit on the potential to emit; and not require a technically achievable control technology determination under OAR 340–226–0130 or a maximum achievable control technology determination under OAR 340–244–0200.

[10] Activities that are expected to result in little or no change in emissions include, for example: vacuum pumps; hand-held sanding equipment; Lithographic printing equipment which uses laser printing; concrete application and installation; among numerous other activities. See submitted changes to OAR 340–210–0225 in the submission in the docket for this action.

[11] Specifically, construction or modification that would have emissions from any new, modified, or replaced device or activity, or any combination of devices or activities, of less than the significant emission rate (SER) defined in OAR 340–200–0020; not result in an increase of emissions from the source above any plant site emission limit (PSEL); not result in an increase of emissions from the source above the netting basis by more than or equal to the SER; not be used to establish a federally enforceable limit on the potential to emit; be used to establish a State-only enforceable limit on the potential to emit; not require a technically achievable control technology (TACT) determination under OAR 340–226–0130 or a maximum achievable control technology (MACT) determination under OAR 340–244–0200; and not cause or contribute to a new exceedance of the NAAQS for a new or replaced device or activity.

[12] Specifically, construction or modification that would result in emissions from any new, modified, or replaced device or activity, or any combination of devices or activities, of more than or equal to the SER defined in OAR 340–200–0020; result in an increase of emissions from the source above any PSEL before applying unassigned emissions or emissions reduction credits available to the source but less than the SER after applying unassigned emissions or emissions reduction credits available to the source; be used to establish a federally enforceable limit on the potential to emit; require a TACT determination under OAR 340–226–0130 or a MACT determination under 340–244–0200; or not cause or contribute to a new exceedance of a National Ambient Air Quality Standard adopted under OAR chapter 340, division 202 for a new or replaced device or activity.

cause or contribute to a new exceedance of the NAAQS. We propose to approve these revisions as strengthening the SIP because they require an air quality analysis to demonstrate the NAAQS are protected when Type 2 and Type 3 construction and modification activities are planned at a source.

The State revised the construction approval conditions in OAR 340–210–0240 to clarify when and how an applicant may proceed with construction or modification. For a Type 1 change, an owner or operator may proceed with construction immediately after notifying the permitting authority, unless the owner or operator requests confirmation. For a Type 2 change, an owner or operator may construct or modify 60 calendar days after the permitting authority receives the complete notice application and fees, or on the date that the permitting authority approves the application in writing, whichever is sooner, unless the permitting authority determines that the activity does not qualify as a Type 2 change. When planning a Type 3 or Type 4 change, an owner or operator must obtain the appropriate air contaminant discharge permit prior to proceeding with construction or modification. Upon approval, an owner or operator must commence construction or modification within 18 months. Approval terminates if not commenced within 18 months, except that a source may request one 18 month extension of the deadline. Oregon also spelled out that any construction or modification must happen according to the plans and specifications reviewed and approved by the permitting authority. Finally, Oregon revised OAR 340–210–0250 to clarify which types of permits must be obtained for Type 3 and 4 changes. We propose to approve the changes because they clarify the construction approval requirements and require owners and operators to construct according to approved plans.

E. Division 216—Air Contaminant Discharge Permits

As part of the submission, the State revised the air contaminant discharge permit (ACDP) requirements in Division 216 to ensure proper permitting and NAAQS compliance. First, Oregon updated the general applicability provisions in OAR 340–216–0020 to make clear that the owner or operator of a source must construct and operate the permitted facility in accordance with previously-approved plans and specifications. Second, the State revised OAR 340–216–0025 to add clarifying language about the permitting authority's ability to reassign a source to a different permit type. Specifically, Oregon added language stating that, notwithstanding the other eligibility requirements already established in the State regulations for the different types of ACDPs, the permitting authority may change the specific permit type to be issued to a source based on several additional factors including the compliance history of the facility's corporate officers, parent company, subsidiaries, and other related people and entities. We propose to approve these changes because they are designed to enhance State oversight of stationary source construction and operation.

Permit Application Procedures

Oregon made changes to the permit application procedures in OAR 340–216–0040 to require additional application materials when a source applies for a new, renewed, or modified permit. These materials were added to help ensure that subject sources will not cause or contribute to a new exceedance of the NAAQS, including the short-term NAAQS promulgated by the EPA in 2010 for SO_2 and NO_2.

When requesting a new ACDP—except a new short-term activity permit—in addition to what was already required in the application, each source must also provide:

- The make, model, and identification number associated with activities and devices used at the source, if available;
- The specific exhaust parameters for devices used at the source;
- The most recent information reported to the EPA's toxics release inventory (TRI) for that specific source, if that source is subject to the TRI program;
- An air quality impact analysis conducted in accordance with Division 225 demonstrating that the source's emissions will not cause or contribute to a new exceedance of any NAAQS;
- The anticipated date of commencement of construction; and
- The anticipated date of construction completion.

When requesting to renew an ACDP permit, in addition to the already-required materials, each source must also submit:

- All information required for a new ACDP if that information has changed since the last permit renewal or issuance;
- A complete list of all devices and activities at the source;
- An estimate of the amount and type of each air contaminant emitted by the source; and
- All changes to the source since the last permit issuance and all requirements applicable to those changes; and
- When required by the permitting authority, an air quality analysis conducted in accordance with Division 225 demonstrating that the source's emissions will not cause or contribute to a new exceedance of a NAAQS.

For requests to modify an ACDP permit, in addition to the already-required materials, each source must also submit:

- When required by the permitting authority, an air quality analysis conducted in accordance with Division 225 demonstrating that the source's emissions will not cause or contribute to a new exceedance of a NAAQS.

For all permit applications, if additional information is needed to complete the permit application, the permitting authority will send a written request to the applicant and require the information be submitted within 60 days. Applicants may request a good cause extension. We propose to approve the changes to the permit application procedures because they are designed to provide the permitting authority with the specific information needed to issue a permit that protects ambient air quality, including the short-term NAAQS.

Short-Term Activity Permits

With respect to short-term activity ACDPs, the State revised OAR 340–216–0054 to make clear that a short-term permit is only available for activities that either do not require a title V operating permit, that are unexpected or emergencies, or that involve a pilot plant or exploratory emissions unit. The State also added several application requirements, including, if required by the permitting authority, an air quality impact analysis demonstrating that the source's emissions will not cause or contribute to a new exceedance of the NAAQS. The State added that a short-term activity permit automatically terminates after 60 days. A source may request one 60-day extension, but no more. If a short-term activity permit is issued to an already-permitted source, that source must include the emissions from the short-term activity when determining compliance with applicable plant site emission limits. We propose to approve these revisions because they are intended to prevent covered activities from causing or contributing to a new NAAQS exceedance.

General Permits

As specified in Division 216, general ACDPs are established by the permitting authority for specific source categories when there are multiple sources with

the same, or substantially similar, types of operations. The general permit provisions indicate that such a permit is appropriate when all requirements applicable to a covered operation may be included in the general permit, the emission limitations, monitoring, recordkeeping and reporting are the same for all operations covered by the general permit, and the regulated pollutants emitted are of the same type for all covered operations. Examples include rock crushers and asphalt plants. For such general permits, the State added procedures to OAR 340–216–0060 spelling out how a person may petition to add a new category to the list of source categories covered by general permits. We propose to approve the revisions to OAR 340–216–0060.

Simple and Standard Permits

Simple ACDPs, described in OAR 340–216–0064, generally limit a source's emissions to less than the significant emission rate (SER) for each pollutant. Oregon updated these requirements to ensure that emissions from a source permitted under a simple permit will not cause or contribute to a new exceedance of a NAAQS. In particular, the revisions require that a simple permit include each physical or operational limit required to ensure all devices and activities at a source are controlled, or a requirement to conduct ambient monitoring to ensure compliance with the NAAQS. Oregon also extended the simple permit term from 5 years to 10 years. For standard permits in OAR 340–216–0066, Oregon made similar changes, except that the permit term for standard permits will generally remain at 5 years, except when issued to meet major new source review (NSR), in which case the permit will have no expiration date. We propose to approve these changes as consistent with the EPA's NSR regulations at 40 CFR 51.161 through 166. For further discussion, see section II.G. of this preamble.

Permit Termination and Department-Initiated Permit Modifications

Oregon revised the rules addressing termination of permits in OAR 340–216–0082 to make clear that a source may not operate after an air contaminant discharge permit has been terminated. However, when a construction approval permit is terminated for failure to commence or complete construction within required timeframes, a source may request an extension for good cause and a terminated permit may be reinstated by the permitting authority if the source submits a complete renewal application within 30 days of termination and pays all applicable fees. Oregon also revised OAR 340–216–0884 to make clear that department-initiated modifications are issued by the permitting authority following the regulatory procedures for each type of permit, including the appropriate public participation process spelled out in Division 209. We propose to approve the changes because they clarify the public process for department-initiated modifications and spell out the permit termination procedures.

Permit Fees

In the submission, Oregon requested to remove a table of permit fees from the SIP (Table 2 to OAR 340–216–8020). This table includes the specific dollar amounts charged for various types of permit actions and is revised over time by the State for inflation and needed revenue adjustments. We propose to approve Oregon's request to remove the fee table from the SIP because the overall requirement for sources to pay pre-construction permit fees at OAR 340–216–8020(1) will remain in the SIP, consistent with the requirements of Clean Air Act section 110(a)(2)(L).[13]

F. Division 222—Stationary Source Plant Site Emission Limits

Plant site emission limits (PSELs) are included in most Oregon air contaminant discharge permits and title V operating permits as a means of regulating plantwide increases and decreases in air emissions. Historically, PSELs were established by the Oregon DEQ at either source-specific levels or standardized ''generic'' levels for each pollutant. Generic PSELs were defined in the Oregon air regulations as annual limits set at one (1) ton less than the significant emission rate (SER) for each pollutant. In practice, a source with capacity less than the SER for a pollutant would often be assigned a generic PSEL in a permit. However, many such sources had actual emissions lower than the generic PSEL. This system was devised in 2001 as a permit streamlining practice that allowed owners or operators to increase emissions up to the generic PSEL without requiring a permit modification, if there were no physical modifications to the source. Oregon has since determined that the use of generic PSELs is no longer an appropriate permitting tool. In the submission, the State eliminated generic PSELs in favor of PSELs specific to an individual source or source category. The changes are described in the following paragraphs.

[13] OAR–340–214–0820(a).

Oregon clarified in the general requirements for establishing PSELs at OAR 340–222–0035 that such limits must include aggregate insignificant activities, if applicable, because aggregate insignificant activities must be considered when determining new source review applicability under Division 224. We propose to approve this clarification because it is intended to make sure that sources are appropriately brought into the new source review permitting program for review.

The State repealed the generic PSEL option at OAR 340–222–0040 and all references to generic PSELs in Division 222. Oregon then revised the annual PSEL provisions in OAR 340–222–0041 to account for the repeal of the generic PSEL option and to further clarify how the permitting authority will establish all types of annual PSELs. Specifically, for a general ACDP, the permitting authority may establish a general PSEL for a pollutant based on the corresponding source category's maximum potential to emit that pollutant.[14] For each source subject to a simple ACDP, a source-specific PSEL is established for each regulated pollutant based on the facility's potential to emit. In addition, for each source subject to a standard ACDP, the permitting authority will establish a source-specific PSEL for each regulated pollutant based on the facility's potential to emit, netting basis, or a level requested by the applicant, whichever is less. This approach is designed to yield permits that more accurately reflect actual emissions and to ensure the permitting authority has the opportunity to require and review

[14] Revised OAR 340–222–0041(1) states ''For sources subject to a General ACDP or a General Oregon Title V Operating Permit, a PSEL may be set based on the potential to emit of the largest emitting source in that source category for all sources on that permit type in the State. PSELs will be set for all regulated pollutants emitted at more than the de minimis emission level.'' The EPA interprets this to mean that the PSEL may be set based on the potential to emit of the largest emitting source in the source category for which the permitting authority issued the General ACDP. For example, the Oregon DEQ has issued a General ACDP for portable and stationary rock crushers, screens, and associated material handling activities (SIC 1442): Permit Number AQGP–008 (available at *https://www.oregon.gov/deq/FilterPermitsDocs/AQGP-008.pdf*). Revised OAR 340–222–0041(1) permits the Oregon DEQ to set the PSELs for sources eligible under this General ACDP to the potential to emit of the largest emitting portable and stationary rock crusher, screening, and material handling source that holds a current General ACDP under AQGP–008 in Oregon. The EPA further understands that a source with the potential to emit equal to or greater than the significant emission rate (SER) for a pollutant is subject to a standard ACDP and therefore any PSEL revisions for sources subject to General ACDPs will always be lower than prior Generic PSELs.

air quality modeling for compliance with the short-term NAAQS.

Finally, Oregon clarified that an increase in the PSEL for PM_{10} or $PM_{2.5}$ is subject to air quality analysis requirements but an increase in total particulate matter is not, as described in section II.H. of this preamble. In reviewing the repeal of generic PSELs and the changes to Division 222, we propose to approve the changes described as well as other changes Oregon made to the PSEL rules because they clarify and strengthen the SIP.

G. Division 224—New Source Review

Oregon revised the new source review (NSR) requirements in Division 224 to remove the expiration dates from NSR permits. The State made this change because the permitting authority must reissue an expired NSR permit in order to change NSR permit conditions. For certain sources subject to both NSR and title V, NSR permits must be incorporated into title V operating permits and this change to remove expiration dates is intended to eliminate the need for the source to reapply for the same permit and for the permitting authority to reissue the permit. We propose to approve the removal of NSR permit expiration dates because the EPA's NSR regulations at 40 CFR 51.161 through 166 do not mandate NSR permits expire after a specific duration and removal of the expiration dates does not affect the stringency of the SIP.

H. Division 225—Air Quality Analysis Requirements

Certain sources seeking permits in Oregon are subject to the air quality analysis requirements in Division 225. In the submission, the State added language to the procedural requirements in OAR 340–225–0030. Significant increases in total particulate matter emissions [15] do not require an air quality impact analysis for comparison to significant impact levels, PSD increments, and ambient air quality standards. However, if applicable, the Oregon DEQ may require an owner or operator to speciate particulate matter and conduct an air quality analysis for PM_{10} and $PM_{2.5}$. We propose to approve this clarification because it is appropriate to focus air quality analyses on $PM_{2.5}$ and PM_{10} for comparison to the PM_{10} and $PM_{2.5}$ NAAQS.

Oregon also corrected the rule language addressing analyses to determine compliance with the NAAQS, PSD increments, visibility and other requirements in OAR 340–225–0050 and OAR 340–225–0070 to consistently refer to a ''proposed source or modification.'' We propose to approve the changes because they correct inadvertent errors from a prior State rulemaking.

I. Division 226—General Emission Standards

The State revised the general emission standards for highest and best practicable treatment and control in Division 226. Specifically, Oregon revised OAR 340–226–0010 to state that the Oregon DEQ may establish permit conditions to prevent the degradation of air quality. Oregon added language to OAR 340–226–0140 to make clear that any air quality analysis must be conducted in accordance with the procedures in Division 225. The revisions also included changes to the same rule section clarifying that for existing sources, the permitting authority may conduct monitoring or modeling (or may require the source to conduct monitoring or modeling) to determine whether the source's emissions will cause or contribute to a new exceedance of an ambient air quality standard. In addition, OAR 340–226–0240 historically phased in tighter grain loading standards to limit particulate matter emissions from sources other than fuel and refuse burning.[16] The tighter limits are now in effect and the State has removed the obsolete phase-in language. We propose to approve the changes because they are designed to improve permit program implementation and protect the NAAQS.

J. Division 228—Requirements for Fuel Burning Equipment

Oregon made similar changes to the fuel burning equipment requirements in Division 228 to remove obsolete language that historically phased in tighter emission limits. We propose to approve these housekeeping changes.

K. Division 232—Emission Standards for VOC Point Sources

Oregon revised the non-categorical emission standards at OAR 340–232–0040 to clarify that certain large VOC sources with no categorical Reasonably Available Control Technology (RACT) requirements are subject to case-by-case RACT determination by the Oregon DEQ. If a source is located in the Portland-Vancouver or Salem-Keizer areas [17] and has the potential to emit over 100 tons per year of VOC from aggregated, non-regulated emissions units based on the design capacity or maximum production or throughput capacity of the source operating 8,760 hours per year without the use of control devices or limits on hours of operation, it is subject to case-by-case RACT. A source that has complied with the NSR requirements in Division 224 and is subject to Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) requirements is presumed to have met the Division 232 RACT requirements. In addition, a source may request relief from RACT by demonstrating to the Oregon DEQ that the aggregated, non-regulated emissions units are unable to emit more than 100 tons per year of VOC, based on the design capacity or maximum production or throughput capacity of the source operating 8,760 hours per year without the use of control devices. We propose to approve the changes because they make clear that a VOC PSEL is not sufficient to avoid this non-categorical RACT requirement.

The State also revised the surface coating in manufacturing requirements at OAR 340–232–0160 to clarify that surface coating operations not specifically listed in the rule are subject to OAR 340–232–0040. But the requirements do not apply to certain very small VOC sources.[18] We propose to approve these minor changes.

L. Division 234—Emission Standards for Wood Products Industries

Oregon revised the emission standards for kraft pulp mills to clarify that sources subject to the particulate emission standards in Division 234 are not *also* subject to the grain loading standards in Divisions 226 and 228 and the opacity limits in Division 208. We propose to approve this clarification.

M. Division 21—General Emission Standards for Particulate Matter

The Oregon SIP contains certain expired rules that historically addressed industrial contingency requirements for selected PM_{10} nonattainment areas in Oregon (OAR 340–021–0200 through 0245). In the submission, Oregon requested to remove the rule sections from the SIP because they have expired and are no longer in effect as a matter of State law. The expired rule sections

[15] Significant in this context means equal to or greater than the SER.

[16] Fuel and refuse burning are regulated in Divisions 228 and 230, respectively.

[17] See OAR 340–232–0020.

[18] Specifically, sources whose VOC potential to emit before add on controls from activities identified in section (5) is less than 10 tons per year; sources with VOC actual emissions before add on controls from activities identified in section (5) are less than 3 pounds per hour; sources with VOC actual emissions before add on controls from activities identified in section (5) are less than 15 pounds per day. See OAR 340–232–0160.

applied only to coarse particulate (PM_{10}) nonattainment areas that failed to attain the 1987 PM_{10} NAAQS by the applicable attainment date of December 31, 1994.[19] There are no areas in which these rules apply because all PM_{10} nonattainment areas in Oregon have attained the PM_{10} standard and have been redesignated to attainment.[20] We propose to approve the State's request to remove the Division 21 rules from the SIP because the rules are expired, apply nowhere in Oregon, were repealed by the State in 1998, no longer exist as a matter of State law, and as such, removal will not interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of this chapter.

III. Proposed Action

The EPA is proposing to approve revisions to the Oregon SIP submitted on March 27, 2023.[21] The following paragraphs detail our proposed incorporations by reference.

A. Rule Sections To Be Incorporated by Reference

The EPA is proposing to incorporate specific Oregon administrative rule sections by reference. Upon final action, the regulatory portion of the Oregon SIP, at 40 CFR 52.1970(c), will include the following provisions, State effective March 1, 2023:

- OAR 340–200–0020 General Air Quality Definitions (defining terms used in the Oregon air quality regulations);
- OAR 340–200–0025 Abbreviations and Acronyms (defining abbreviations and acronyms used in the Oregon air quality regulations);
- OAR 340–200–0035 Reference Materials (specifying the title and version of each reference material used in the Oregon air quality regulations);
- OAR 340–204–0300 Designation of Sustainment Areas [22] (identifying the areas in Oregon designated as sustaining the relevant air quality standard);
- OAR 340–204–0310 Designation of Reattainment Areas [23] (identifying the areas in Oregon designated as reattaining the relevant air quality standard);
- OAR 340–206–0010 Introduction (establishing significant harm levels for pollutants in areas based on priority level);
- OAR 340–208–0110 Visible Air Contaminant Limitations (establishing limits and test methods for visible emissions);
- OAR 340–209–0080 Issuance or Denial of a Permit (specifying procedures for issuing and denying permits, including how to request a hearing to contest a permit decision);
- OAR 340–210–0100 Registration in General (identifying categories of sources that are required to register with the Oregon DEQ);
- OAR 340–210–0205 Notice of Construction and Approval of Plans: Applicability and Requirements, except paragraph (3) (listing source types and activities that require notice to the Oregon DEQ prior to construction);
- OAR 340–210–0225 Notice of Construction and Approval of Plans: Types of Construction/Modification Changes (establishing the activities that qualify for each type of notice of construction);
- OAR 340–210–0230 Notice of Construction and Approval of Plans: Notice to Construct Application (requiring the specific information to be submitted in an application);
- OAR 340–210–0240 Notice of Construction and Approval of Plans: Construction Approval (specifying what level of approval from Oregon DEQ is needed before a source may begin construction);
- OAR 340–210–0250 Notice of Construction and Approval of Plans: Approval to Operate (specifying what is required of a source to obtain approval to operate);
- OAR 340–214–0110 Reporting: Request for Information (requiring sources to respond to Oregon DEQ requests for information);
- OAR 340–214–0114 Reporting: Records; Maintaining and Reporting (detailing when and how to record and report data);
- OAR 340–214–0130 Reporting: Information Exempt from Disclosure (establishing that trade secrets and other eligible data may be exempt from disclosure);
- OAR 340–216–0020 Applicability and Jurisdiction (identifying source categories subject to air contaminant discharge permits);
- OAR 340–216–0025 Types and Permits (identifying the types of air contaminant discharge permits);
- OAR 340–216–0040 Application Requirements (spelling out the information required to be included in permit applications);
- OAR 340–216–0054 Short Term Activity ACDPs (listing the pilot and other time-limited activities that may be eligible for a short term activity ACDP);
- OAR 340–216–0056 Basic ACDPs (identifying the contents of a basic ACDP);
- OAR 340–216–0060 General Air Contaminant Discharge Permits (identifying the contents of a general ACDP);
- OAR 340–216–0064 Simple ACDPs (identifying the contents of a simple ACDP);
- OAR 340–216–0066 Standard ACDPs (identifying the contents of a standard ACDP);
- OAR 340–216–0068 Simple and Standard ACDP Attachments (allowing Oregon DEQ to add requirements to existing simple and standard ACDP permits);
- OAR 340–216–0082 Expiration, Termination, Reinstatement or Revocation of an ACDP (regulating when and how ACDPs expire, are terminated, reinstated or revoked);
- OAR 340–216–0084 Department Initiated Modification (establishing a means by which Oregon DEQ may modify an ACDP when needed);
- OAR 340–216–8010 Table 1—Activities and Sources (listing which source categories and associated activities must obtain an ACDP);
- OAR 340–216–8020 Table 2—Air Contaminant Discharge Permits, except paragraph (2) and Table 2 (requiring sources to pay ACDP fees to the Oregon DEQ);
- OAR 340–222–0020 Applicability and Jurisdiction (requiring that plant site emission limits are included in most ACDPs and title V operating permits);
- OAR 340–222–0035 General Requirements for Establishing All PSELs (describing how plant site emission limits are established and how they are revised);
- OAR 340–222–0041 Annual PSELs (prescribing how annual plant site emission limits are established on a source-specific basis);
- OAR 340–222–0042 Short Term PSEL (establishing short term limits for sources located in areas with an established short term significant emission rate);
- OAR 340–222–0046 Netting Basis (establishes netting basis requirements);
- OAR 340–224–0030 New Source Review Procedural Requirements (establishing application and processing procedures for new source review permits);

[19] See 57 FR 13498, April 16, 1992, at page 13537. The applicable attainment date for PM_{10} nonattainment areas classified as ''moderate'' was December 31, 1994. All designated PM_{10} areas in Oregon were classified as moderate.

[20] See Oregon area designations codified at 40 CFR 81.338.

[21] We note that we have not described minor wording changes and clarifications that do not alter the meaning of the rules. We also note that we intend to address the submitted changes to Division 214, related to stationary source reporting requirements, in a separate action.

[22] Oregon revised the regulatory note only, not the regulatory text.

[23] Oregon revised the regulatory note only, not the regulatory text.

• OAR 340–224–0520 Net Air Quality Benefit Emission Offsets: Requirements for Demonstrating Net Air Quality Benefit for Ozone Areas (requiring certain sources to offset emissions in areas with ozone problems);

• OAR 340–224–0530 Net Air Quality Benefit Emission Offsets: Requirements for Demonstrating Net Air Quality Benefit for Non-Ozone Areas (requiring sources to offset emissions in areas with particulate matter problems);

• OAR 340–225–0030 Procedural Requirements (prescribing the procedures for air quality analysis);

• OAR 340–225–0050 Requirements for Analysis in PSD Class II and Class III Areas (establishing the modeling requirements for sources in PSD class II and III areas);

• OAR 340–225–0070 Requirements for Demonstrating Compliance with Air Quality Related Values Protection (describing how to comply with limits established for national parks, wilderness, and other areas);

• OAR 340–226–0100 Highest and Best Practicable Treatment and Control: Policy and Application (requiring appropriate conditions in permits to control and treat emissions to the highest extent);

• OAR 340–226–0130 Highest and Best Practicable Treatment and Control: Typically Achievable Control Technology (TACT) (laying out when and how the Oregon DEQ will make typically achievable control technology determinations);

• OAR 340–226–0140 Highest and Best Practicable Treatment and Control: Additional Control Requirements for Stationary Sources of Air Contaminants (providing that the Oregon DEQ will establish additional control requirements to protect the NAAQS, visibility, and other public health and environmental goals);

• OAR 340–226–0210 Grain Loading Standards: Particulate Emission Limitations for Sources Other Than Fuel Burning Equipment, Refuse Burning Equipment and Fugitive Emissions (establishing particulate emission standards for non-fuel burning equipment);

• OAR 340–228–0210 General Emission Standards for Fuel Burning Equipment: Grain Loading Standards (setting grain loading standards for fuel-burning equipment);

• OAR 340–232–0030 Definitions (defining terms used in the rules establishing emission standards for VOC point sources);

• OAR 340–232–0040 General Non-Categorical Requirements (spelling out general case-by-case RACT requirements for VOC point sources);

• OAR 340–232–0090 Bulk Gasoline Terminals Including Truck and Trailer Loading (VOC emission limits for bulk gasoline terminals);

• OAR 340–232–0160 Surface Coating in Manufacturing (VOC emission limits for surface coating operations);

• OAR 340–232–0170 Aerospace Component Coating Operations (VOC emission limits for component coating in the aerospace industry);

• OAR 340–234–0010 Definitions except (8) and (10) (defining terms used in the rules establishing emission standards for the wood products industry);

• OAR 340–234–0210 Kraft Pulp Mills: Emission Limitations, except references to total reduced sulfur (setting emission limits for kraft pulp mills);

• OAR 340–236–8010 Hot Mix Asphalt Plants: Table—Process Weight Table (requiring hot mix asphalt plants to comply with specific process weight discharge rates);

B. Rule Sections To Be Removed From Incorporation by Reference

The EPA is proposing to remove from incorporation by reference the following Oregon administrative rule sections:

• OAR 340–210–0215 Notice of Construction and Approval of Plans: Requirement, State effective April 16, 2015 (requirements to notify the Oregon DEQ prior to constructing or modifying a subject source);

• OAR 340–222–0040 Generic Annual PSEL, State effective April 16, 2015 (establishing generic plant site emission limits for subject sources that emit less than the significant emission rate);

• OAR 340–021–200 Purpose, State effective May 1, 1995 (describing the purpose of contingency control requirements for existing industrial sources in coarse particulate matter nonattainment areas);

• OAR 340–021–205 Relation to Other Rules, State effective March 10, 1993 (describing the relation of contingency control requirements to other regulations);

• OAR 340–021–210 Applicability, State effective March 10, 1993 (stating that contingency control requirements shall apply if the EPA determines an area has failed to attain the PM_{10} standard by the applicable attainment date);

• OAR 340–021–215 Definitions, State effective March 10, 1993 (establishing definitions used in the contingency control requirements);

• OAR 340–021–220 Compliance Schedule for Existing Sources, State effective March 10, 1993 (setting the compliance schedule for sources to install emissions control systems as a contingency control requirement);

• OAR 340–021–225 Wood-Waste Boilers, State effective March 10, 1993 (limiting emissions from wood-waste boilers to a specific rate as a contingency control requirement);

• OAR 340–021–230 Wood Particle Dryers at Particleboard Plants, State effective March 10, 1993 (limiting emissions from wood particle dryers to a specific rate as a contingency control requirement);

• OAR 340–021–235 Hardboard Manufacturing Plants, State effective March 10, 1993 (limiting emissions from hardboard manufacturing plants to a specific rate as a contingency control requirement);

• OAR 340–021–240 Air Conveying Systems, State effective March 10, 1993 (limiting emissions from air conveying systems to a specific rate as a contingency control requirement); and

• OAR 340–021–245 Fugitive Emissions, State effective March 10, 1993 (requiring wood products manufacturing plants to limit fugitive emissions as a contingency control requirement).

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in section III. of this preamble. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also in this document, the EPA is proposing to remove in a final rule, regulatory text from incorporated by reference, as described in section III. of this preamble.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of

the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the proposed rule would not have Tribal implications and would not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as part of its SIP submission; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal 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, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 26, 2024.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2024–06807 Filed 3–29–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 89, No. 63
Monday, April 1, 2024

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

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–62–2023]

Foreign-Trade Zone (FTZ) 183; Authorization of Production Activity; Flextronics America, LLC; (Automated Data Processing Machines); Austin, Texas

On November 28, 2023, Flextronics America, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 183C, in Austin, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 84302, December 5, 2023). On March 27, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: March 27, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–06841 Filed 3–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–61–2023]

Production Activity Not Authorized; Foreign-Trade Zone (FTZ) 26; Mohawk Carpet Distribution, LLC; (Machine-Made Woven and Tufted Rugs of Polypropylene); Calhoun and Sugar Valley, Georgia

On November 28, 2023, Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, submitted a notification of proposed production activity to the FTZ Board on behalf of Mohawk Carpet Distribution, LLC, within FTZ 26, in Calhoun and Sugar Valley, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 84302, December 5, 2023). On March 27, 2024, the applicant was notified of the FTZ Board's decision that further review of the activity is warranted. The production activity described in the notification was not authorized. If the applicant wishes to seek authorization for this activity, it will need to submit an application for production authority, pursuant to section 400.23.

Dated: March 27, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–06842 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–902]

Utility Scale Wind Towers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2021–2022; Correction

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

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of March 7, 2024, in which Commerce announced the final results of the 2021–2022 administrative review of the antidumping duty (AD) order on utility scale wind towers from the Republic of Korea. That notice did not include our final determination of no shipments, the dumping margin and the appendix listing companies not selected for individual review, and information in the ''Assessment Rates'' section for companies not selected for individual review. Moreover, the notice listed incorrect dates for the period of review (POR) in the ''Final Results of Review'' section.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background On March 7, 2024, Commerce published in the **Federal Register** the *Final Results.*[1] In that notice, we failed to include our final determination of no shipments, the dumping margin and the appendix listing companies not selected for individual review, as well as information in the ''Assessment Rate'' section for companies not selected for individual review. Finally, we inadvertently listed incorrect dates for the POR in the ''Final Results of Review'' section.

Correction

In the **Federal Register** of March 7, 2024, in FR Doc 2024–04881, on page 16544, in the third column, add the section below entitled ''Final Determination of No Shipments'' after ''Changes Since the *Preliminary Results,*'' and replace the section entitled ''Final Results of Review'' with the section below entitled ''Final Results of Review.''

In addition, on page 16544, in the third column, replace the section entitled ''Assessment Rates'' with the section below entitled ''Assessment Rates.''

Finally, on page 16545, in the third column, revise the title of the appendix to be Appendix I and add the attached Appendix II.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that the following companies had no shipments of subject merchandise during the POR: Hyosung Heavy Industries Corporation (Hyosung) and CS Wind Corporation (CS Wind).[2] As we have not received any information to contradict this determination, consistent with our practice, we will instruct U.S. Customs and Border Protection to liquidate any

[1] *See Utility Scale Wind Towers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 89 FR 16544 (March 7, 2024) (*Final Results*).

[2] *See Utility Scale Wind Towers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022,* 88 FR 60929 (September 6, 2023) (*Preliminary Results*).

suspended entries that entered under Hyosung's and CS Wind's AD case numbers (*i.e.,* at that exporter's rate), at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Final Results of Review

We determine that the following weighted-average dumping margins exist for the period August 1, 2021, through July 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Dongkuk S&C Co., Ltd	1.95
Companies Not Selected for Individual Review [3]	1.95

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), Dongkuk S&C Co., Ltd. (Dongkuk) reported the entered value of its U.S. sales such that 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 either 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 Dongkuk for which the company 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 of 5.41 percent if there is no rate for the intermediate company(ies) involved in the transaction.[4]

For the companies not selected for individual review, we used an assessment rate based on the cash deposit rate calculated for Dongkuk. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for the future deposits of estimated duties where applicable.[5]

Commerce intends to issue liquidation 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).

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: March 26, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix II

Review-Specific Rate Applicable to Companies Not Selected for Individual Review

1. CS Wind China Co., Ltd.
2. CS Wind Malaysia Sdn. Bhd.
3. CS Wind Taiwan Ltd.
4. CS Wind Turkey Kule Imalati A.S.
5. CS Wind UK Limited
6. CS Wind Vietnam Co., Ltd.
7. Enercon Korea Inc.
8. GE Renewable Energy
9. Nordex SE
10. Siemens Gamesa Renewable Energy Limited
11. Vestas Korea
12. Vestas Korea Wind Technology Ltd.

[FR Doc. 2024–06835 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

[3] The companies not selected for individual review are listed in Appendix II.

[4] *See Order;* and *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders,* 85 FR 56213 (September 11, 2020) (correcting the date that the provisional measures period expired). For a full discussion of the ''automatic assessment'' practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[5] *See* section 751(a)(2)(C) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty (AD) and countervailing duty (CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following AD and CVD order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–079 ...	731–TA–1407	China	Cast Iron Soil Pipe (1st Review)	Thomas Martin (202) 482–3936.
A–201–842 ...	731–TA–1200	Mexico	Large Residential Washers (2nd Review)	Mary Kolberg (202) 482–1785.
A–570–082 ...	731–TA–1412	China	Steel Wheels (1st Review)	Jacqueline Arrowsmith (202) 482–5255.
A–570–981 ...	731–TA–1195	China	Utility Wind Towers (2nd Review)	Thomas Martin (202) 482–3936.
A–552–863 ...	731–TA–1196	Vietnam ...	Utility Wind Towers (2nd Review)	Thomas Martin (202) 482–3936.
C–570–080 ..	701–TA–597	China	Cast Iron Soil Pipe (1st Review)	Thomas Martin (202) 482–3936.
C–570–083 ..	701–TA–602	China	Steel Wheels (1st Review)	Jacqueline Arrowsmith (202) 482–5255.
C–570–982 ..	701–TA–486	China	Utility Wind Towers (2nd Review)	Mary Kolberg (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at *https://enforcement.trade.gov/sunset/*. All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[1]

Information Required From Interested Parties

Domestic interested parties, as defined in sections 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that all parties wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning AD and CVD proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 22, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–06793 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023)

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–838]

Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of frozen

warmwater shrimp (shrimp) from the Socialist Republic of Vietnam (Vietnam). The period of investigation is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). On November 21, 2023, Commerce published in the **Federal Register** the notice of initiation of this investigation.[1] On December 7, 2023, Commerce postponed the preliminary determination of this investigation until March 25, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Scope of the Investigation

The product covered by this investigation is shrimp from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[7] For further information, *see* the ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determinations in the companion antidumping duty (AD) investigations of shrimp from Ecuador and Indonesia, based on a request made by the petitioner.[8] Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than August 5, 2024, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Thong Thuan Company Limited (Thong Thuan). Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Soc-Trang Seafood Joint Stock Company (STAPIMEX). Consequently, the rate calculated for STAPIMEX is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Soc Trang Seafood Joint Stock Company	2.84
Thong Thuan Company Limited	196.41
All Others	2.84

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

[1] *See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 88 FR 81053 (November 21, 2023) (*Initiation Notice*).

[2] *See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 88 FR 85216 (December 7, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 81054.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* sections 776(a) and (b) of the Act.

[8] *See* Petitioner's Letter, ''Request for Alignment,'' dated February 22, 2024. The petitioner is the American Shrimp Processors Association.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[9] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[10]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[11] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[13] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of shrimp from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: March 25, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation includes certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.21.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheadings 1605.21.0500 and 1605.29.0500); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.29.1040); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Analysis of Vietnam's Financial System
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Subsidies Valuation
IX. Benchmarks and Interest Rates
X. Analysis of Programs
XI. Recommendation

[FR Doc. 2024–06846 Filed 3–29–24; 8:45 am]

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[9] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[12] *See APO and Service Final Rule.*

[13] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–133, C–570–134]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders, in Part

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

SUMMARY: The U.S. Department of Commerce (Commerce) is issuing the final results of changed circumstances reviews (CCRs) of the antidumping duty (AD) and countervailing duty (CVD) orders on certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China), to revoke the orders, in part, with respect to certain metal safes.

DATES: Applicable April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1678.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 2024, Commerce published its initiation and preliminary results in the CCRs on metal lockers from China,[1] in which Commerce found that changed circumstances warranted revocation of the *Orders,*[2] in part, with respect to certain metal safes, with an effective date retroactive to December 1, 2021. We provided interested parties with the opportunity to comment and request a public hearing regarding the *Preliminary Results.* Commerce did not receive any comments from interested parties.

Scope of the Orders

The scope of the *Orders* covers certain metal lockers, with or without doors, and parts thereof (metal lockers). The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTSUS subheading 9403.90.8041. In addition, subject certain metal lockers may also enter under HTSUS subheading 9403.20.0050. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the *Orders* is dispositive. For a full description of the revised scope of the *Orders, see* appendix.

Final Results of Changed Circumstances Reviews and Revocation of the Orders, in Part

Commerce did not receive comments, and as a result, continues to determine that domestic locker producers accounting for greater than 85 percent of the domestic industry have expressed support for SA Consumer Products (SA) and Academy, Ltd.'s (doing business as Academy Sports + Outdoors) (Academy), requested CCRs,[3] which includes support from List Industries and Tennsco LLC, petitioners in the underlying investigation,[4] as well as other domestic locker producers.[5] As a result, Commerce finds that changed circumstances warrant revocation of the *Orders,* in part, with respect to certain metal safes, as described in the revised scope language, and will therefore be excluded from the *Orders*.[6] For a full explanation of our analysis please see the *Preliminary Results,* which is adopted in these final results.[7]

Application of the Final Results of These Reviews

SA and Academy requested that Commerce apply the final results of these reviews retroactively to December 1, 2021.[8] Commerce has discretion to determine the applicable date of the determination pursuant to section 751(d)(3) of the Tariff Act of 1930, as amended (the Act), which provides that ''{a} determination under this section to revoke an order . . . shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.'' Furthermore, we note that substantially all of the domestic industry, which is in support of the partial revocation, also agrees with applying the partial revocation retroactively to December 1, 2021. Thus, because all parties agree, and Commerce has no administrability concerns with the proposed effective date of the partial revocation being December 1, 2021, the final results of these CCRs are applicable, effective December 1, 2021. For a full explanation of our analysis please see the *Preliminary Results*.[9]

Instructions to U.S. Customs and Border Protection (CBP)

Because we determine there are changed circumstances that warrant the revocation of on *Orders,* in part, we will instruct CBP to liquidate without regard to antidumping and countervailing duties, and to refund any estimated antidumping and countervailing duties on all unliquidated entries of the merchandise covered by this partial revocation, effective December 1, 2021.

Commerce intends to issue instructions to CBP no earlier than 35 days after the date of publication of these final results of CCRs in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the 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).

Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act, 19 CFR 351.216, 19 CFR 351.221(c)(3) and 19 CFR 351.222.

[1] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Reviews, and Intent to Revoke the Antidumping and Countervailing Duty Orders, In Part,* 89 FR 14432 (February 27, 2024) (*Preliminary Results*).

[2] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 46826 (August 20, 2021) (*Orders*).

[3] *See* Petitioners' Letter, ''Response to Request for an Expedited Changed Circumstances Review to Amend the Scope of the Orders,'' dated January 31, 2024 (Petitioners' Comments) at 2–3 and Attachment 1; *see also* Petitioners' Letter, ''Petitioners' Submission of Amended Domestic Industry Form,'' dated February 13, 2024 at 1–2.

[4] *See* Petitioners' Comments at 1.

[5] *Id.* at 2–3; *see also* Petitioners' Letter, ''Petitioners' Response to First Supplemental Questionnaire,'' dated February 9, 2024, at 3 and Attachment 1.

[6] *See* Appendix.

[7] *See Preliminary Results.*

[8] *See* Petitioners' Comments at 2.

[9] *See Preliminary Results.*

Dated: March 26, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary For Enforcement and Compliance.

Appendix

Revised Scope of the Orders

The scope of the *Orders* covers certain metal lockers, with or without doors, and parts thereof (metal lockers). The subject metal lockers are secure metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements taken on the outside dimensions of the single-locker unit. The height is the vertical measurement from the bottom to the top of the unit. The width is the horizontal (side to side) measurement of the front of the unit, and the front of the unit is the face with the door or doors or the opening for internal access of the unit if configured without a door. The depth is the measurement from the front to the back of the unit. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors.

The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallically coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings.

Where the product has doors, the doors are typically configured with or for a handle or other device or other means that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock (including cylinder locks) lever or knob lock, electronic key pad, or other electronic or wireless lock. The handle and locking mechanism, if included, need not be integrated into one another. The subject locker may or may not also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.,* all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.,* doors, frames, shelves, tops, bottoms, backs, side panels, *etc.*) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. *Slope tops:* Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. *Bases:* Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. *Expansion filler panel:* Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. *Dividers:* Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. *Recess trim:* Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. *Decorative end panels:* End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. *End caps:* End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced, or sold with the imported locker or locker system except the lock.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood, or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage. The excluded exchange lockers include assembled exchange lockers and those that enter in 'knock down' form in which all of the parts and components to assemble a completed exchange locker unit are packaged together. Parts for exchange lockers that are imported separately from the exchange lockers in 'knock down' form are not excluded.

Also excluded are metal lockers that are imported with an installed electronic, internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are locks and hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to locks and bulk imported rivets, nuts, bolts, hinges, door handles, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

Mobile tool chest attachments that meet the physical description above are covered by the scope of the *Orders,* unless such attachments are covered by the scope of the *Orders* on certain tool chests and cabinets from China. If the *Orders* on certain tool chests and cabinets from China are revoked, the mobile tool chest attachments from China will be covered by the scope of the *Orders.*

The scope also excludes metal safes with each of the following characteristics: (1) Pry resistant, concealed hinges; (2) body walls and doors of steel that are at least 17 gauge (0.05625 inch or 1.42874 mm thick); and (3) an integrated locking mechanism that includes at least two round steel bolts 0.75 inch (19 mm) or larger in diameter; or three bolts 0.70 inch (17.78 mm) or more in diameter; or four or more bolts at least 0.60

inch (15.24 mm) or more in diameter, that project from the door into the body or frame of the safe when in the locked position.

The scope also excludes metal safes with each of the following characteristics:

(1) Pry resistant hinges, whether concealed or external. External hinges must be accompanied by solid steel inactive bolts (minimum 0.75 inch (19 mm) diameter) or plates (minimum 0.177 inch (4.5 mm) thickness), welded or bolted to the door and protrude into the safe and into or behind the door frame by at least 0.39 inches (10 mm) to prevent the physical removal or opening of the door;

(2) body walls and doors made of steel that is at least 17 gauge (0.05625 inch or 1.42874 mm thick);

(3) an integrated locking mechanism that includes one of the following: (a) at least two round steel active bolts 0.75 inch (19 mm) or larger in diameter; (b) three or more steel active bolts 0.70 inch (17.78 mm) or more in diameter; (c) four or more steel active bolts at least 0.60 inch (15.24 mm) or more in diameter; or (d) four or more flat steel locking plates (at least two active and two inactive) of a minimum of 0.177 inch (4.5 mm) in thickness and minimum height of 1.57 inches (40 mm), that extend out from the door by at least 0.78 inches (20 mm). The bolts or plates must project from the door, into the safe, and into or behind the door frame by at least 0.39 inches (10 mm) to prevent the physical removal or opening of the door; and

(4) made of a welded body construction and enter the United States fully assembled.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols. The lock shall be protected by a casehardened (Rc 60+) drill-resistant steel plate, or drill-resistant material of equivalent strength.

(3) Boltwork shall consist of a minimum of three steel locking bolts of at least ½ inch thickness that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls shall be constructed of a minimum 12-gauge thick steel for a single-walled safe, or the sum of the steel walls shall add up to at least 0.100 inches for safes with walls made from two pieces of flat-rolled steel.

(5) Doors shall be constructed of a minimum one layer of 7-gauge steel plate reinforced construction or at least two layers of a minimum 12-gauge steel compound construction.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include, but are not limited to: Hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock with a lock body that is integrated into the door of the safe. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols.

(3) Bolt work shall consist of a minimum of three steel locking bolts of at least ½-inch diameter that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls (inclusive of the floor and top) shall be constructed of a minimum 14-gauge thick steel and shall be lined with one or more layers of fire-retardant gypsum board bonded, affixed with brackets or otherwise securely attached to the exterior walls. The fire retardant gypsum board shall be at least 15 mm in thickness for a single layer or shall sum to at least 19 mm in thickness where multiple layers are combined together.

(5) Doors shall be constructed of a minimum of one layer of 14-gauge steel lined with a minimum of one layer of 15 mm thick, fire-retardant gypsum board bonded, affixed with brackets or otherwise securely attached to the door. The doors shall fit into jambs equipped with a fire seal fitted completely around the door frame consisting of a hydrated sodium silicate encapsulated in a plastic film or sleeve that, when heat-activated by temperatures of over 210 degrees, expands to cover the space between the jambs and door, providing a barrier to prevent the intrusion of flames, gas, or smoke into the safe.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include but are not limited to: hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

(7) The excluded safe must be imported in the fully assembled condition.

The scope also excludes metal storage devices that (1) have two or more exterior exposed drawers regardless of the height of the unit, or (2) are no more than 30 inches tall and have at least one exterior exposed drawer.

Also excluded from the scope are free standing metal cabinets less than 30 inches tall with a single opening, single door and an installed tabletop.

The scope also excludes metal storage devices less than 27 inches wide and deep that: (1) Have two doors hinged on the right and left side of the door frame respectively covering a single opening and that open from the middle toward the outer frame; or (2) are free standing or wall-mounted, single-opening units 20 inches or less high with a single door.

The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. In addition, subject certain metal lockers may also enter under HTS subheading 9403.20.0050. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the *Orders* is dispositive.

[FR Doc. 2024–06840 Filed 3–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–331–806]

Frozen Warmwater Shrimp From Ecuador: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With the Final Antidumping Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of frozen warmwater shrimp (shrimp) from Ecuador. The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Reginald Anadio or Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3166 or (202) 482–5377, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). On November 21, 2023, Commerce published in the **Federal Register** the notice of initiation of this investigation.[1] On December 7, 2023, Commerce postponed the preliminary determination until March 25, 2024.[2]

[1] *See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 88 FR 81053 (November 21, 2023) (*Initiation Notice*).

[2] *See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary*

Continued

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is shrimp from Ecuador. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each subsidy program found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determinations in the companion antidumping duty (AD) investigations of shrimp from Ecuador and Indonesia, based on a request made by the petitioner.[7] Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than August 5, 2024, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated total net subsidy rates for Industrial Pesquera Santa Priscila S.A. (Santa Priscila) and Sociedad Nacional de Galapagos C.A. (SONGA) that are not zero, *de minimis,* or based entirely on the facts otherwise available. Because Commerce calculated individual estimated countervailable subsidy rates for Santa Priscila and SONGA that are not zero, *de minimis,* or based entirely on the facts otherwise available, we have preliminarily calculated the all-others rate using a simple average of the individual estimated subsidy rates calculated for the examined respondents.[8]

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Industrial Pesquera Santa Priscila S.A.[9]	13.41
Sociedad Nacional de Galapagos C.A.[10]	1.69
All Others	7.55

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of the publication of this notice, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the

Determinations in the Countervailing Duty Investigations, 88 FR 85216 (December 7, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of frozen warmwater shrimp from Ecuador,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 81054.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Petitioner's Letter, ''Request to Alignment,'' dated February 22, 2024. The petitioner is the American Shrimp Processors Association.

[8] When two respondents are under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's proprietary U.S. sale quantities for the merchandise under consideration; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). We currently do not have on the record the necessary publicly-ranged sales data to conduct the rate comparison discussed above. Therefore, for purposes of the preliminary determination, we calculated the all-others rate as the simple average of the total net subsidy rates calculated for the two mandatory respondents. We will solicit the necessary publicly-ranged sales data after the issuance of the preliminary determination.

[9] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily determines Industrial Pesquera Santa Priscila S.A. is cross-owned with Manesil S.A., Produmar S.A., Tropack S.A., and Egidiosa S.A.

[10] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily determines Sociedad Nacional de Galapagos C.A. is cross-owned with Naturisa S.A., Holding Sola & Sola Solacciones S.A., and Empacadora Champmar S.A.

date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[15] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum extrusions from Indonesia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: March 25, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation includes certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the nonshrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

Appendix II

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Diversification of Ecuador's Economy
VI. Injury Test
VII. Subsidies Valuation
VIII. Benchmarks and Discount Rates
IX. Analysis of Programs
X. Recommendation

[FR Doc. 2024–06845 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[12] *See* 19 351.309(c)(2) and (d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

[15] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–919]

Mattresses From India: Amended Preliminary Determination of Less-Than-Fair-Value Investigation

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending its preliminary affirmative determination in the less-than-fair-value (LTFV) investigation of mattresses from India to correct for significant ministerial errors. The period of investigation (POI) is July 1, 2022, through June 30, 2023.

DATES: Applicable April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Paul Senoyuit, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6106.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2024, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of mattresses from India.[1] On March 4, 2024, mandatory respondent Varahamurti Flexirub Industries Private Limited (VFI) and the petitioners [2] timely alleged that Commerce made significant ministerial errors in calculating VFI's estimated weighted-average dumping margin.[3]

Scope of the Investigation

The products covered by this investigation are mattresses from India. For a complete description of the scope of this investigation, *see* the appendix.

Legal Framework

A ministerial error is defined as including ''errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which {Commerce} considers ministerial.'' [4] A ministerial error is considered to be ''significant'' if its correction, either singly or in combination with other errors, would result in: (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination; or (2) a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin of greater than *de minimis* or vice versa.[5] Pursuant to 19 CFR 351.224(e), Commerce ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.''

Analysis of Significant Ministerial Errors

In the *Preliminary Determination,* Commerce made significant ministerial errors within the meaning of section 735(e) of the Act, and 19 CFR 351.224(f) and (g)(1) in calculating the estimated weighted-average dumping margin for VFI. Accordingly, pursuant to 19 CFR 351.224(e), Commerce is amending its *Preliminary Determination* to correct for these significant ministerial errors by revising the rates for VFI (*i.e.,* 14.05 percent) and the All-Other companies.[6] For a detailed discussion of the alleged ministerial errors, as well as Commerce's analysis, *see* the Ministerial Error Memorandum.[7]

Amended Preliminary Determination

As a result of correcting these significant ministerial errors, Commerce determines the following weighted-average dumping margins exist: [8]

Exporter/producer	Weighted-average dumping margin (percent)
International Comfort Technologies Private Limited	*42.76
Raj Mahal Fabrics	*42.76
Varahamurti Flexirub Industries Private Limited	14.05
All Others	14.05

*Adverse facts available.

Disclosure

We intend to disclose the calculations performed for this amended preliminary determination to parties within five days after public announcement of the amended preliminary determination in accordance with 19 CFR 351.224(b).

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised according to the rates calculated in this amended preliminary determination, in accordance with section 733(d) of the Act. Because the amended rates for VFI and all others result in decreased cash deposits, they will be effective retroactively to March 1, 2024, the date of publication of the *Preliminary Determination*. We will also instruct U.S. Customs and Border Protection (CBP) to issue instructions for requesting a refund of the difference between the amount of cash deposits paid as a result of the application of the preliminary determination rates and the amount due as a result of the amended preliminary determination rates.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the U.S. International Trade Commission of our amended preliminary determination.

Notification to Interested Parties

This amended preliminary determination is issued and published pursuant to sections 733(d) and 777(i) of the Act, and 19 CFR 351.224(e).

Dated: March 25, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses

[1] See Mattresses from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures, 89 FR 15140 (March 1, 2024) (Preliminary Determination), and accompanying Preliminary Decision Memorandum.

[2] The petitioners are Brooklyn Bedding LLC, Carpenter Company, Corsicana Mattress Company, Future Foam, Inc., FXI, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC, Southerland Inc.; Tempur Sealy International, Inc., the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (collectively, the petitioners).

[3] *See* VFI's Letter, ''VFI Ministerial Error Comments for the Preliminary Determination,'' dated March 4, 2024; *see also* Petitioners' Letter, ''Mattress Petitioners' Ministerial Error Comments,'' dated March 4, 2024.

[4] *See* section 735(e) of the Tariff Act of 1930, as amended (the Act); *see also* 19 CFR 351.224(f).

[5] *See* 19 CFR 351.224(g).

[6] *See Preliminary Determination,* 89 FR at 15141 (''the rate calculated for VFI is also assigned as the rate for all other producers and exporters'').

[7] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Mattresses from India: Allegation of Ministerial Errors in the Preliminary Determination,'' dated concurrently with this notice.

[8] Commerce preliminarily determined that Varahamurti Flexirub Industries Private Limited, Amore International, Durfi Retail Private Limited and Springfit Marketing INC are a single entity. We also preliminarily determined that International Comfort Technologies Limited and Sheela Foam are a single entity. *See* Preliminary Decision Memorandum.

also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

[FR Doc. 2024–06794 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–843]

Frozen Warmwater Shrimp From Indonesia: Preliminary Negative Countervailing Duty Determination, and Alignment of Final Determination With the Final Antidumping Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of frozen warmwater shrimp (shrimp) from Indonesia. The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). On November 21, 2023, Commerce published in the **Federal Register** the notice of initiation of this investigation.[1] On December 7, 2023, Commerce postponed the preliminary determination until March 25, 2024.[2]

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is shrimp from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

[1] *See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 88 FR 81053 (November 21, 2023).

[2] *See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 88 FR 85216 (December 7, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination of the Countervailing Duty Investigation of Frozen Warmwater Shrimp from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] in the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiate Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each subsidy program found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the concurrent antidumping duty (AD) investigations of shrimp from Ecuador and Indonesia, based on a request made by the petitioner.[7] Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than August 5, 2024, unless postponed.

Preliminary Determination

For this preliminary determination, Commerce calculated *de minimis* estimated countervailable subsidies for each individually examined producer/exporter of the subject merchandise. Consistent with section 703(b)(4)(A) of the Act, Commerce is disregarding the *de minimis* rates, and we preliminarily determine that countervailable subsidies are not being provided to producers/exporters of the subject merchandise in Indonesia.

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
PT Bahari Makmur Sejati[8]	*0.39
PT First Marine Seafoods[9]	*0.71

de minimis.

Consistent with section 703(d) of the Act, Commerce has not calculated an estimated weighted-average subsidy rate for all other producers and exporters because it has not made an affirmative preliminary determination.

Suspension of Liquidation

Because Commerce preliminarily determines that countervailable subsidies are not being provided to the production or exportation of subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation of any such entries.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided in 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[14] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine 75 days after the final determination whether imports of shrimp from Indonesia are materially injuring, or threaten material injury to, the U.S. industry.

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 81054.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Petitioner's Letter, ''Request for Alignment,'' dated February 22, 2024. The petitioner is the American Shrimp Processors Association.

[8] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily determined that PT Bahari Makmur Sejati is cross-owned with PT International Packaging Manufacturing and PT Total Pack Indonesia.

[9] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily determined that PT First Marine Seafoods is cross-owned with PT Khom Foods.

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Final Rule.*

[14] *See* 19 CFR 351.310(d).

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: March 25, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation includes certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.21.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheadings 1605.21.0500 and 1605.29.0500); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.29.1040); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV Scope of the Investigation
V. Injury Test
VI. Subsidies Valuation
VII. Analysis of Programs
VIII. Recommendation

[FR Doc. 2024–06844 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for May 2024

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in May 2024 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Circular Welded Carbon-Quality Steel Pipe from China, A–570–910 (1st Review)	Thomas Martin, (202) 482–3936.
Glycine from India, A–533–883 (1st Review)	Mary Kolberg, (202) 482–1785.
Glycine from Japan, A–588–878 (1st Review)	Mary Kolberg, (202) 482–1785.
Glycine from Thailand, A–549–837 (1st Review)	Mary Kolberg, (202) 482–1785.
Laminated Woven Sacks from Vietnam, A–552–823 (1st Review)	Thomas Martin, (202) 482–3936.
Silicomanganese from India, A–533–823 (4th Review)	Jacqueline Arrowsmith, (202) 482–5255.
Silicomanganese from Kazakhstan, A–834–807 (4th Review)	Jacqueline Arrowsmith, (202) 482–5255.
Silicomanganese from Venezuela, A–307–820 (4th Review)	Jacqueline Arrowsmith, (202) 482–5255.
Countervailing Duty Proceedings	
Circular Welded Carbon-Quality Steel Pipe from China, C–570–911 (1st Review)	Mary Kolberg, (202) 482–1785.
Glycine from China, C–570–081 (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
Glycine from India, C–533–884 (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
Laminated Woven Sacks from Vietnam, C–552–824 (1st Review)	Thomas Martin, (202) 482–3936.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in May 2024. Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 27, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–06834 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–921]

Frozen Warmwater Shrimp From India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of frozen warmwater shrimp (shrimp) from India. The period of investigation is April 1, 2022, through March 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Steven Seifert or Benjamin Nathan, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3350 or (202) 482–3834, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). On November 21, 2023, Commerce published in the **Federal Register** the notice of initiation of this investigation.[1] On December 7, 2023, Commerce postponed the preliminary determination of this investigation until March 25, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Scope of the Investigation

The product covered by this investigation is shrimp from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determinations in the companion antidumping duty (AD) investigations of shrimp from Ecuador and Indonesia, based on a request made by the petitioner.[7] Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than August 5, 2024, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated individual estimated countervailable subsidy rates for Devi Sea Foods Limited (Devi) and Sandhya Aqua Exports Pvt. Ltd. (Sandhya) that are not zero, *de minimis,* or based entirely on facts otherwise

[1] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023)

[1] *See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation,* 88 FR 81053 (November 21, 2023) (*Initiation Notice*).

[2] *See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 88 FR 85216 (December 7, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Frozen Warmwater Shrimp from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 88 FR at 81054.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Petitioner's Letter, ''Request for Alignment,'' dated February 22, 2024. The petitioner is the American Shrimp Processors Association.

available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[8]

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:[9]

Company	Subsidy rate (percent *ad valorem*)
Devi Sea Foods Limited; Devi Seafoods Inc; Devee Horizon LLP	4.72
Sandhya Aqua Exports Pvt. Ltd.; Neeli Sea Foods Private Limited; Vijay Aqua Processors Private Limited; Neeli Aqua Farms	3.89
All Others	4.36

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue.

Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[14] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of shrimp from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: March 25, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation includes certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from

[8] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the All-Others Rate Calculation Memorandum.

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Sandhya: Neeli Sea Foods Private Limited, Vijay Aqua Processors Private Limited, and Neeli Aqua Farms. Commerce further found the following companies to be cross-owned with Devi: Devee Horizon LLP, and Devi Seafoods Inc. *See* Memoranda, ''Preliminary Determination Calculations for Sandhya Aqua Exports Private Limited,'' dated concurrently with this notice, and ''Preliminary Determination Calculations for Devi Sea Foods Limited,'' respectively, at Cross Ownership.

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2)

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Final Rule.*

[14] *See* 19 CFR 351.310(d).

warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the nonshrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Subsidies Valuation
VII. Analysis of Programs
VIII. Recommendation

[FR Doc. 2024–06843 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results and Partial Rescission of the Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that producers/exporters subject to this review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) October 1, 2021, through September 30, 2022.

DATES: Applicable April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2352 and (202) 482–1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2023, Commerce published the *Preliminary Results* for this administrative review and invited interested parties to comment.[1] This review covers two mandatory respondents selected for individual examination, ArcelorMittal Mexico S.A. de C.V. (AMM) and Deacero S.A.P.I de C.V. (Deacero).

From November 13 through 17, 2023, we conducted a verification of sales of certain alloy steel wire rod (wire rod) from Mexico for Deacero in Monterrey, Mexico. On January 29, 2024, we received a case brief from Nucor Corporation and Commercial Metal Company (collectively, Nucor/CMC),[2] and, subsequently, on February 5, 2024, we received a rebuttal brief from Deacero.[3] A complete summary of the events that occurred since publication of the *Preliminary Results* is found in the Issues and Decision Memorandum.[4] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On March 6, 2023, Nucor/CMC withdrew their requests for review by the 90-day deadline for: AMM; Grupo Villacero S.A de C.V. (Villacero); Talleres y Aceros S.A. de C.V (Talleres y Aceros); and Ternium Mexico S.A. de C.V. (Ternium).[5] Nucor/CMC's request for review of Villacero, Talleres y Aceros, and Ternium reflected the sole review request with respect to each firm; accordingly, we are rescinding this administrative review with respect to Villacero, Talleres y Aceros, and Ternium.

Scope of the Order[6]

The merchandise subject to the *Order* is wire rod, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under the subheadings: 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510,

[1] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 76727 (November 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Nucor/CMC's Letter, ''Case Brief,'' dated January 29, 2024.

[3] *See* Deacero's Letter, ''Rebuttal Brief,'' dated February 5, 2024.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See* Nucor/CMC's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated March 6, 2023.

[6] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002) (*Order*).

7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6030, 7227.90.6035, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description remains dispositive.

For the full text of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of the Comments Received

All issues raised in the case and rebuttal briefs that were submitted by interested parties are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum, is attached 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 System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and analysis of the comments received from interested parties regarding our *Preliminary Results,* we made no changes to the preliminary weighted-average dumping margins calculated for AMM and Deacero. Additionally, in its *Preliminary Results,* Commerce inadvertently assigned a non-selected rate to certain entities. As noted above, Commerce is rescinding the administrative review for Villacero, Talleres y Aceros, and Ternium. For detailed information, *see* the Issues and Decision Memorandum.

Final Results of Review

Commerce preliminarily determines the following estimated weighted-average dumping margins exist for the period October 1, 2021, through September 30, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
ArcelorMittal Mexico S.A. de C.V	0.00
Deacero S.A.P.I. de C.V	0.70

Disclosure

We intend to disclose to interested parties the calculations and analysis performed for these final results within five days of the date of the publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. 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 those sales. Where the respondent did not report entered value, we calculated a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also calculated an importer-specific *ad valorem* ratio based on estimated entered values. Where either 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.[7]

For entries of subject merchandise during the POR produced by Deacero or AMM for which they did not know their merchandise they sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[8]

For the companies for which this review is rescinded with these final results, we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period October 1, 2021, through September 30, 2022, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register** in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by 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 margins established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer has been covered in a prior complete segment of this proceeding, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.11 percent.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

[7] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[8] *See* section 751(a)(2)(C) of the Act.

[9] *See Order,* 67 FR at 65947.

of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/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 these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: March 26, 2024.

Abdelali Elouaradia,

Deputy 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. Changes Since the *Preliminary Results*
V. Discussion of the Issues
Comment 1: Whether the Application of Adverse Facts Available (AFA) to Deacero Is Warranted
Comment 2: Whether Commerce Should Rescind the Review for Certain Non-Selected Companies
Comment 3: Whether Commerce Should Instruct U.S. Customs and Border Protection (CBP) To Liquidate Entries for Certain Producers at the All-Others Rate
VI. Recommendation

[FR Doc. 2024–06839 Filed 3–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the U.S. Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity To Request a Review: Not later than the last day of April 2024,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period to be reviewed
Antidumping Duty Proceedings	
Argentina: Biodiesel, A–357–820	4/1/23–3/31/24
Bahrain: Common Alloy Aluminum Sheet, A–525–001	4/1/23–3/31/24
Bosnia and Herzegovina: Silicon Metal, A–893–001	4/1/23–3/31/24
Brazil: Common Alloy Aluminum Sheet, A–351–854	4/1/23–3/31/24
Croatia: Common Alloy Aluminum Sheet, A–891–001	4/1/23–3/31/24
Czech Republic: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, A–851–804	4/1/23–3/31/24
Egypt: Common Alloy Aluminum Sheet, A–729–803	4/1/23–3/31/24
Germany: Common Alloy Aluminum Sheet, A–428–849	4/1/23–3/31/24
Iceland: Silicon Metal, A–400–001	4/1/23–3/31/24
India:	
Carbon and Alloy Steel Threaded Rod, A–533–887	4/1/23–3/31/24
Common Alloy Aluminum Sheet, A–533–895	4/1/23–3/31/24
Indonesia:	
Biodiesel, A–560–830	4/1/23–3/31/24
Common Alloy Aluminum Sheet, A–560–835	4/1/23–3/31/24
Italy: Common Alloy Aluminum Sheet, A–475–842	4/1/23–3/31/24
Oman: Common Alloy Aluminum Sheet, A–523–814	4/1/23–3/31/24
Romania: Common Alloy Aluminum Sheet, A–485–809	4/1/23–3/31/24
Republic of Korea: Phosphor Copper, A–580–885	4/1/23–3/31/24
Serbia: Common Alloy Aluminum Sheet, A–801–001	4/1/23–3/31/24
Slovenia: Common Alloy Aluminum Sheet, A–856–001	4/1/23–3/31/24
South Africa: Common Alloy Aluminum Sheet, A–791–825	4/1/23–3/31/24
Spain: Common Alloy Aluminum Sheet, A–469–820	4/1/23–3/31/24
Taiwan: Common Alloy Aluminum Sheet, A–583–867	4/1/23–3/31/24
Thailand: Rubber Bands, A–549–835	4/1/23–3/31/24
The People's Republic of China:	
1,1,1,2- Tetrafluoroethane (R–134A), A–570–904	4/1/23–3/31/24
Certain Activated Carbon, A–570–904	4/1/23–3/31/24
Aluminum Foil, A–570–053	4/1/23–3/31/24
Alloy and Certain Carbon Steel Threaded Rod, A–570–104	4/1/23–3/31/24
Drawn Stainless Steel Sinks, A–570–983	4/1/23–3/31/24
Magnesium Metal, A–570–896	4/1/23–3/31/24
Certain Mobile Access Equipment and Subassemblies Thereof, A–570–139	4/1/23–3/31/24
Non-Malleable Cast Iron Pipe Fittings, A–570–875	4/1/23–3/31/24
Stainless Steel Sheet and Strip, A–570–042	4/1/23–3/31/24
Steel Threaded Rod, A–570–932	4/1/23–3/31/24
Twist Ties, A–570–131	4/1/23–3/31/24
Wooden Cabinets and Vanities and Components Thereof, A–570–106	4/1/23–3/31/24
Turkey: Common Alloy Aluminum Sheet, A–583–839	4/1/23–3/31/24
Countervailing Duty Proceedings	
India:	
Carbon and Alloy Steel Threaded Rod, C–533–888	1/1/23–12/31/23
Common Alloy Aluminum Sheet, C–533–896	1/1/23–12/31/23
Mexico: Standard Steel Welded Wire Mesh, C–201–854	1/1/23–12/31/23
Morocco: Phosphate Fertilizers, C–714–001	1/1/23–12/31/23
The People's Republic of China:	
Aluminum Foil, C–570–054	1/1/23–12/31/23
Carbon and Alloy Steel Threaded Rod, C–570–105	1/1/23–12/31/23
Drawn Stainless Steel Sinks, C–570–984	1/1/23–12/31/23
Stainless Steel Sheet and Strip, C–570–043	1/1/23–12/31/23
Twist Ties, C–570–132	1/1/23–12/31/23
Wooden Cabinets and Vanities and Components Thereof, C–570–107	1/1/23–12/31/23

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period to be reviewed
The Republic of Kazakhstan: Silicon Metal, C–834–811	1/1/23–12/31/23
The Russian Federation: Phosphate Fertilizers, C–821–825	1/1/23–12/31/23
Turkey: Common Alloy Aluminum Sheet, C–489–840	1/1/23–12/31/23
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2024. If Commerce does not receive, by the last day of March 2024, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27,

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 26, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–06838 Filed 3–29–24; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Notice of Hearing

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) will conduct a public hearing to receive views from interested parties about the Commission's agenda and priorities for fiscal year (FY) 2025, which begins on October 1, 2024, and for FY 2026, which begins on October 1, 2025. We invite members of the public to participate.

DATES: The hybrid hearing will be held in person at CPSC's headquarters and remotely via webinar on May 8, 2024, beginning at 10:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: This year's hearing will be held as a hybrid meeting—in person at CPSC's headquarters and remotely via webinar. For individuals attending in person, the meeting will be held at CPSC's headquarters, located at 4330 East-West Highway, 4th Floor—Hearing Room, Bethesda, MD 20814. Individuals who plan to attend the meeting remotely should use the following link to access the meeting: *https://cpsc.webex.com/cpsc/j.php?MTID=m8963411189b6bd697089c6282d08b7e9*. Requests to make oral presentations (in person or remotely) and the text of oral presentations and written comments should be sent by email to *cpsc-os@cpsc.gov* with the subject line, ''Agenda and Priorities FY 2025 and/or 2026.'' Requests to make oral presentations—in

person or remotely—and the written text of any oral presentations must be received by the Office of the Secretary not later than 5:00 p.m. EDT on April 24, 2024. The Commission will accept written comments as well. These also must be received by the Office of the Secretary not later than 5:00 p.m. EDT on April 24, 2024.

FOR FURTHER INFORMATION CONTACT: For information about the hearing, or to request an opportunity to make an oral presentation, whether in person or remotely, please send an email to CPSC's Office of the Secretary at *cpsc-os@cpsc.gov.* If you have any questions about the hearing, you may contact Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone (301) 504–7479.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(j) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053(j), requires the Commission to establish an agenda for action under the laws the Commission administers and, to the extent feasible, select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that when establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.

II. Instructions for Remote Attendees

The hybrid public hearing will be held on May 8, 2024, at 10:00 a.m. EDT in person at CPSC's headquarters and remotely via webinar. The notice for the hearing will also be made available on the CPSC website on the public calendar: *https://www.cpsc.gov/Newsroom/Public-Calendar.* Individuals who plan to attend the meeting remotely should use the following link to access the meeting: *https://cpsc.webex.com/cpsc/j.php?MTID=m8963411189b6bd697089c6282d08b7e9.*

III. Oral Presentations (Both in Person at CPSC's Headquarters and Remotely via Webinar) and Submission of Written Comments

The Commission is preparing the agency's fiscal year 2025 Operating Plan and fiscal year 2026 Congressional Budget Request. Fiscal year 2025 begins on October 1, 2024, and fiscal year 2026 begins on October 1, 2025. Through this notice, the Commission invites the public to comment on the Commission's agenda and priorities that will be established in the fiscal year 2025 Operating Plan and the fiscal year 2026 Congressional Budget Request. Proposed priorities should be aligned with the agency's Strategic Plan for fiscal years 2023–2026, which is available at *http://www.cpsc.gov/about-cpsc/agency-reports/performance-and-budget.*

Persons who desire to make oral presentations at the hearing on May 8, 2024—in person or remotely—should send an email to the Office of the Secretary, U.S. Consumer Product Safety Commission at *cpsc-os@cpsc.gov* not later than 5:00 p.m. EDT on April 24, 2024. Texts of intended oral presentations should be captioned ''Agenda and Priorities FY 2025 and/or 2026'' and must be received not later than 5:00 p.m. EDT on April 24, 2024. Oral presentations—in person or remotely—should be limited to approximately 10 minutes. The Commission reserves the right to impose further time limitations or other restrictions on presentations.

If you do not want to make an oral presentation but would like to provide written comments, you may do so. Written comments should be captioned, ''Agenda and Priorities FY 2025 and/or 2026,'' and sent to Office of the Secretary, U.S. Consumer Product Safety Commission at *cpsc-os@cpsc.gov* not later than 5 p.m. EDT on April 24, 2024. There is no length restriction for written comments.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2024–06816 Filed 3–29–24; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2023–HQ–0016]

Submission for OMB Review; Comment Request

AGENCY: U.S. Army Corps of Engineers (USACE), Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by May 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Jurisdictional Determination Forms and Aquatic Resources Delineation Forms; ENG Forms 6116 (0–9), 6245–6250, 6281 (0–2); OMB Control Number 0710–0024.

Type of Request: Extension.

Request for Corps Jurisdictional Determination (ENG 6247)

Number of Respondents: 16,891.
Responses per Respondent: 1.
Annual Responses: 16,891.
Average Burden per Response: 10 minutes.
Annual Burden Hours: 2,815.

Approved Jurisdictional Determination Forms (ENG 6245, 6248, & 6281)

Number of Respondents: 668.
Responses per Respondent: 1.
Annual Responses: 668.
Average Burden per Response: 150 minutes.
Annual Burden Hours: 1,670.

Rapanos Dry Land AJD Form (ENG 6246)

Number of Respondents: 243.
Responses per Respondent: 1.
Annual Responses: 243.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 61.

Preliminary JD Form (ENG 6249)

Number of Respondents: 1,500.
Responses per Respondent: 1.
Annual Responses: 1,500.
Average Burden per Response: 25 minutes.
Annual Burden Hours: 625.

Ordinary High Water Mark Data Sheet (ENG 6250)

Number of Respondents: 39,980.
Responses per Respondent: 1.
Annual Responses: 39,980.
Average Burden per Response: 30 minutes.
Annual Burden Hours: 19,990.

Automated Wetland Data Sheets (ENG 6116 (0–9))

Number of Respondents: 48,692.
Responses per Respondent: 2.
Annual Responses: 97,384.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 48,692.

Total

Number of Respondents: 107,974.
Annual Responses: 156,666.
Annual Burden Hours: 73,853.
Frequency: On Occasion.
Needs and Uses:

Jurisdictional Determination Forms

The USACE (Corps), through its Regulatory Program, regulates certain activities in waters of the United States (WOTUS), pursuant to section 404 of the Clean Water Act (CWA). WOTUS are defined under 33 CFR part 328. The Corps also regulates certain activities in ''navigable WOTUS'' pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). The Corps has authorized its district engineers to issue formal determinations concerning the applicability of the CWA or the RHA to tracts of land. (See 33 CFR 320.1(a)(6)). These formal determinations concerning the applicability of the CWA or RHA to tracts of land are known as ''jurisdictional determinations.'' Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the Corps to help implement section 404 of the CWA (33 U.S.C. 1344) and sections 9 and 10 of the RHA (33 U.S.C. 401, *et seq.*). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes.

On August 29, 2023, the U.S. Environmental Protection Agency and Department of the Army (the agencies) issued a final rule to amend the final ''Revised Definition of 'WOTUS' '' rule, published in the **Federal Register** on January 18, 2023. This final rule conforms the definition of ''WOTUS'' to the U.S. Supreme Court's May 25, 2023, decision in the case of *Sackett* v. *Environmental Protection Agency.* Parts of the January 2023 rule are invalid under the Supreme Court's interpretation of the CWA in the Sackett decision. Therefore, the agencies have amended key aspects of the regulatory text to conform it to the Court's decision. The conforming rule, ''Revised Definition of 'WOTUS'; Conforming,'' published in the **Federal Register** and became effective on September 8, 2023.

As a result of ongoing litigation on the January 2023 rule, the agencies are currently implementing the January 2023 rule, as amended by the conforming rule, in 23 states, the District of Columbia, and the U.S. Territories. In the other 27 states and for certain parties, the agencies are interpreting ''WOTUS'' consistent with the pre-2015 regulatory regime and the Supreme Court's decision in *Sackett* until further notice.

This information collection request thus implements the collections of information associated with the Corps' implementation of the 2023 rule, as amended, and the pre-2015 regime consistent with *Sackett.* The Corps intends to implement the 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett* using two forms, which consist of the Preliminary Jurisdictional Determination Form (PJD Form) and a ''JD Request Form.'' Under the most recent regulatory regimes (the September 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett*), the Corps has elected to use a Memorandum for Record (MFR) instead of a JD ''form'' to document the basis of its jurisdictional decisions under those two regimes. While we are including four separate AJD Forms in this package, including (1) the ''pre-2015 regime (a.k.a., ''Rapanos'')'' AJD Form, (2) The pre-2015/Rapanos ''dry land'' AJD Form, (3) the 2020 NWPR AJD Form, and (4) the January 2023 rule AJD Form, none of those four AJD Forms are currently in use. Even though these four forms are not currently in use, they are included in this collection for historical purposes. Therefore, there a total of six JD forms (the PJD Form, the JD Request Form, and the 4 historical AJD Forms) in this collection.

Aquatic Resource Delineation Datasheets

In order for the Corps to determine the amount and extent of aquatic resources at a site, the Corps must geographically delineate aquatic resources in accordance with established regulations, policy, and guidance. The aquatic resource delineation datasheets fall into two main categories: (1) the ENG 6119 (0–9) series, which are our automated wetland determination data sheets (ADS) and (2) the Ordinary High-Water Mark (OHWM) field identification datasheet.

To delineate wetlands, the Corps uses the 1987 Corps of Engineers Wetlands Delineation Manual (Corps Manual) and the most current applicable regional supplements. There are ten wetland data sheets in total, but these really are one single collection that is split into 10 regional sub-forms. The ADSs streamline the information collection process by incorporating reference material and analytical processes directly into the form, which is provided as a Microsoft Excel document rather than the PDF form included in the regional supplements. Additionally, the ADSs automate data analysis using information input by the respondent (*e.g.,* the ''dominance test'' for wetland vegetation), which reduces the time and effort required to complete these processes.

Non-tidal, non-wetland WOTUS, which are defined in 33 CFR part 328, must be delineated to the extent of the ordinary high-water mark OHWM, which is defined at 33 CFR 328.3(c)(4) and 33 CFR 329.11(a)(1). Regulatory Guidance Letter (RGL) 05–05 provides guidance on identification of OHWM. In 2022, the Corps released a draft Engineer Research and Development Center Technical Report, ''National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams'' (Draft National Manual), which is the first national manual that provides and describes indicators and a methodology to help improve consistency in the identification and delineation of the OHWM by (1) providing consistent definitions of OHWM indicators; (2) outlining a clear, step-by-step process for identifying the OHWM using a Weight-of-Evidence approach; and (3) providing a datasheet for logging information at a site. As part of the development of the Draft National Manual, the Corps developed a Data Sheet (ENG 6250) for facilitating documentation of the OHWM.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matthew Oreska.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

Dated: March 26, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06829 Filed 3–29–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Wednesday, March 20, 2024 from 8 a.m. to 5 p.m.; closed to the public Thursday, March 21, 2024 from 8 a.m. to 4 p.m.

ADDRESSES: The address of the closed meetings is 4075 Wilson Blvd., Suite 300, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth J. Kowalski, Designated Federal Officer (DFO): (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *elizabeth.j.kowalski.civ@mail.mil,* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its March 20–21, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b(c) (commonly known as the ''Government in the Sunshine Act''), and §§ 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will discuss the 2024 DSB Summer Study on Advanced Capabilities for Potential Future Conflict and classified strategies for continued development of symmetric and asymmetric capabilities.

Agenda: The meeting will begin on Wednesday, March 20, 2024 at 8 a.m. Ms. Betsy Kowalski, DSB DFO, and Dr. Eric Evans, DSB Chair, will provide opening remarks and a classified overview of the objectives of the 2024 Summer Study on Advanced Capabilities for Potential Future Conflict. Next, DSB members will meet to discuss classified strategies that best enable DoD's continued development of symmetric and asymmetric capabilities that will characterize future conflicts, including periodic breaks. The meeting will adjourn at 5 p.m. On Thursday, March 21, 2024, starting at 8 a.m., the DSB will continue to meet to discuss classified strategies that best enable DoD's continued development of symmetric and asymmetric capabilities that will characterize future conflicts, including periodic breaks. The meeting will adjourn at 4 p.m.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Deputy Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meeting. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Research and Engineering.

Written Statements: In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO at the email address provided above in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to a meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: March 27, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06824 Filed 3–29–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Federal Advisory Committees—Armed Forces Retirement Home Advisory Council

AGENCY: Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Armed Forces Retirement Home Advisory Council (AFRHAC) will take place.

DATES: AFRHAC will hold a meeting open to the public on Thursday, April 18, 2024, from 10:30 a.m. to 12:30 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting may be accessed by videoconference. Information for accessing the videoconference will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility''.)

FOR FURTHER INFORMATION CONTACT: Mrs. Lakesia Campbell, Designated Federal Officer (DFO), (202) 541–0667 (voice), *lakesia.campbell@afrh.gov* (email). Website: *www.afrh.gov/aboutus/advisory-council.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5 United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to

the agenda, is available on the AFRHAC website (*https://www.afrh.gov/aboutus/advisory-council*). Materials presented in the meeting may also be obtained on the AFRHAC website.

Purpose of the Meeting: The purpose of the meeting is for the AFRHAC to receive briefings and have discussions on topics related to the administration of the Armed Forces Retirement Home.

Agenda: Thursday, April 18, 2024, from 10:30 a.m. to 12:30 p.m. EST—Meeting Open (Roll Call and Opening Remarks by Chair, Mr. Michael Heimall; Brief: AFRH budget and strategic plan; Brief: healthcare organization and accreditation; Brief: Sheridan Building renovation; Brief: electronic health record modernization.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. chapter 10, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165), this meeting is open to the public from 10:30 a.m. to 12:30 p.m. EST on April 18, 2024. The meeting will be held by videoconference. All members of the public who wish to attend must register by contacting Mrs. Lakesia Campbell at (202) 541–0667 or *lakesia.campbell@afrh.gov* no later than Friday, April 12, 2024 (by 5 p.m. EST). Once registered, the web address and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mrs. Lakesia Campbell at (202) 541–0667 or *lakesia.campbell@afrh.gov* no later than Friday, April 12, 2024 (by 5:00 p.m. EST) so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140, 5 U.S.C. 1009(a)(3), interested persons may submit a written statement to the AFRHAC. Individuals submitting a statement must submit their statement no later than 5 p.m. EST, Friday, April 12, 2024 to Mrs. Lakesia Campbell at (202) 541–0667 or *lakesia.campbell@afrh.gov*. If a statement pertaining to a specific topic being discussed at the planned meeting is not received by Friday, April 12, 2024, prior to the meeting, then it may not be provided to, or considered by, the Council during the April 18, 2024, meeting. The DFO will review all timely submissions with the AFRHAC Chair and ensure such submissions are provided to the members of the AFRHAC before the meeting. Comments not received in time for provision prior to the meeting shall be provided to the AFRHAC Chair. Any comments received by the AFRHAC will be posted on the AFRHAC website (*https://www.afrh.gov/aboutus/advisory-council*).

Dated: March 27, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06853 Filed 3–29–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Wednesday, May 22, 2024 from 8 a.m. to 5 p.m.; closed to the public Thursday, May 23, 2024 from 8 a.m. to 4 p.m.

ADDRESSES: The address of the closed meeting is 4075 Wilson Blvd., Suite 300, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth J. Kowalski, Designated Federal Officer (DFO): (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *elizabeth.j.kowalski.civ@mail.mil,* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b(c) (commonly known as the ''Government in the Sunshine Act''), and sections 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. The DSB will discuss the 2024 DSB Summer Study on Advanced Capabilities for Potential Future Conflict and classified strategies for continued development of symmetric and asymmetric capabilities.

Agenda: The meeting will begin on Wednesday, May 22, 2024 at 8 a.m. Ms. Betsy Kowalski, DSB DFO, and Dr. Eric Evans, DSB Chair, will provide opening remarks and a classified overview of the objectives of the 2024 Summer Study on Advanced Capabilities for Potential Future Conflict. Next, the DSB will meet to discuss classified strategies that best enable DoD's continued development of symmetric and asymmetric capabilities that will characterize future conflicts, including periodic breaks. The meeting will adjourn at 5 p.m. On Thursday, May 23, 2024, starting at 8 a.m., the DSB will continue to meet to discuss classified strategies that best enable DoD's continued development of symmetric and asymmetric capabilities that will characterize future conflicts, including periodic breaks. The meeting will adjourn at 4 p.m.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Deputy Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meeting. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Research and Engineering.

Written Statements: In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: March 27, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06821 Filed 3–29–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Wednesday, April 24, 2024 from 8 a.m. to 5 p.m.; closed to the public Thursday, April 25, 2024 from 8 a.m. to 4 p.m.

ADDRESSES: The address of the closed meeting is 4075 Wilson Blvd., Suite 300, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth J. Kowalski, Designated Federal Officer (DFO): (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *elizabeth.j.kowalski.civ@mail.mil,* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b(c) (commonly known as the ''Government in the Sunshine Act''), and sections 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. The DSB will discuss the 2024 DSB Summer Study on Advanced Capabilities for Potential Future Conflict and classified strategies for continued development of symmetric and asymmetric capabilities.

Agenda: The meeting will begin on Wednesday, April 24, 2024 at 8 a.m. Ms. Betsy Kowalski, DSB DFO, and Dr. Eric Evans, DSB Chair, will provide opening remarks and a classified overview of the objectives of the 2024 Summer Study on Advanced Capabilities for Potential Future Conflict. Next, the DSB will meet to discuss classified strategies that best enable DoD's continued development of symmetric and asymmetric capabilities that will characterize future conflicts, including periodic breaks. The meeting will adjourn at 5 p.m. On Thursday, April 25, 2024, starting at 8 a.m., the DSB will continue to meet to discuss classified strategies that best enable DoD's continued development of symmetric and asymmetric capabilities that will characterize future conflicts, including periodic breaks. The meeting will adjourn at 4 p.m.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Deputy Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meeting. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Research and Engineering.

Written Statements: In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: March 27, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06822 Filed 3–29–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an open virtual meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 30, 2024; 10 a.m. to 5:00 p.m. EDT.

ADDRESSES: This meeting will be held virtually via Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the FESAC meeting website at: *https://science.osti.gov/fes/fesac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Samuel J. Barish, Office of Fusion Energy Sciences (FES); U.S. Department of Energy; Office of Science; 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–2917, Email address: *sam.barish@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Committee is to make recommendations on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the fusion energy sciences program.

Tentative Agenda

- Under Secretary for Science and Innovation Perspective
- Office of Science Perspective
- Report of the Facilities Construction Projects Subcommittee
- Update on the Progress and Plans of the Decadal Plan Subcommittee
- Public Comment
- Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any

of the items on the agenda, you should contact Dr. Barish at *sam.barish@science.doe.gov.* Reasonable provision will be made to include the scheduled oral statements during the Public Comment time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. If you have any questions or need a reasonable accommodation under the Americans with Disabilities Act for this event, please send your request to Sandy Newton at *sandy.newton@science.doe.gov,* two weeks but no later than 48 hours, prior to the event. Closed captions will be enabled.

Minutes: The minutes of the meeting will be available for review on the Fusion Energy Sciences Advisory Committee website: *https://science.osti.gov/fes/fesac/Meetings.*

Signing Authority: This document of the Department of Energy was signed on March 27, 2024, by David Borak, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 27, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–06819 Filed 3–29–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2701–061]

Erie Boulevard Hydropower, L.P.; Notice of Revised Procedural Schedule for Final Environmental Assessment for the Proposed Project Relicense

On February 26, 2021, Erie Boulevard Hydropower, L.P. (Erie) filed an application for a new major license to continue to operate and maintain the 39.75-megawatt (MW) West Canada Creek Hydroelectric Project No. 2701 (West Canada Creek Project). On June 27, 2022, Commission staff issued a notice of intent to prepare a draft and final Environmental Assessment (EA) to evaluate the effects of relicensing the West Canada Creek Project. The notice of intent included a schedule for preparing a draft and final EA. On September 6, 2023, Commission staff issued the draft EA. By notice issued September 21, 2023, the schedule for completing a final EA was revised. The revised due date for the final EA was to be March 2024.

On February 2, 2024 Erie filed a Comprehensive Relicensing Settlement Agreement (Settlement Agreement) on behalf of itself, the U.S. Fish and Wildlife Service, the New York State Department of Environmental Conservation, and the New York State Council of Trout Unlimited. In order for Commission staff to fully consider the Settlement Agreement, stakeholder comments on the Settlement Agreement, and any additional information requested by staff, the procedural schedule for completing a final EA is being revised as follows. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Final EA	September 2024.

Any questions regarding this notice may be directed to Laurie Bauer at (202) 502–6519, or by email at *laurie.bauer@ferc.gov.*

Dated: March 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06770 Filed 3–29–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15322–001]

Kram Hydro 2, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 13, 2024, Kram Hydro 2, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project proposed to be located at the Kentucky River lock and dam 8 on the Kentucky River, in Jessamine and Garrard counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Kentucky River Lock and Dam 8 Hydroelectric Project would consist of the following: (1) an existing 309-foot-long, 31-foot-high concrete lock and dam; (2) an existing 17.6-mile-long, 573-acre reservoir with a storage capacity of 8,700-acre-feet; (3) a proposed 50-foot-wide, 150-foot-long intake channel, upstream of the powerhouse; (4) a proposed 150-foot-long, 50-foot-wide concrete powerhouse, designed to fit within the abandoned lock, containing two identical pit turbine-generator units, with a combined generating capacity of 10 megawatts; (5) a proposed 160-foot-long, 60-foot wide unlined tailrace; (6) a proposed 60-foot-long, 60-foot-wide substation adjacent to the powerhouse; and (7) a proposed 2-mile-long, 138-kilovolt transmission line. The project is estimated to generate an average of 50 gigawatt-hours annually. The existing lock and dam are owned and operated by the Commonwealth of Kentucky.

Applicant Contact: Pamela Niditch, Kram Hydro 2, 12333 Sowden Rd., Suite B. PMB 50808, Houston, TX 77080; phone: (772) 418–2705.

FERC Contact: Prabharanjani Madduri; phone: (202) 502–8017, or by email at *prabharanjani.madduri@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed

to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15322–001.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

More information about this project, including a copy of the application, can be viewed, or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search*. Enter the docket number (P–15322) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06771 Filed 3–29–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1597–000]

Harvest Gold Solar Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Harvest Gold Solar Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 15, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *https://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: March 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06776 Filed 3–29–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–63–000.

Applicants: Big Cypress Solar, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Big Cypress Solar, LLC.

Filed Date: 3/22/24.

Accession Number: 20240322–5224.

Comment Date: 5 p.m. ET 4/12/24.

Docket Numbers: EC24–64–000.

Applicants: AL Sandersville, LLC, MPC Generating, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of AL Sandersville, LLC, et al.

Filed Date: 3/25/24.

Accession Number: 20240325–5261.

Comment Date: 5 p.m. ET 4/15/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–143–000.

Applicants: Hardin Solar Energy III LLC.

Description: Hardin Solar Energy III LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/25/24.

Accession Number: 20240325–5166.

Comment Date: 5 p.m. ET 4/15/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–93–000.

Applicants: Northwest Rural Public Power District v. *Basin Electric Power Cooperative and Tri-State Generation and Transmission Association, Inc.*

Description: Complaint of Northwest Rural Public Power District v. *Basin Electric Power Cooperative, et al.*

Filed Date: 3/25/24.

Accession Number: 20240325–5110.

Comment Date: 5 p.m. ET 4/24/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2794–036; ER14–2672–021; ER12–1825–034.
Applicants: EDF Industrial Power Services (CA), LLC, EDF Energy Services, LLC, EDF Trading North America, LLC.
Description: Supplement to June 29, 2022 Triennial Market Power Analysis for Southwest Region of EDF Trading North America, LLC, et al.
Filed Date: 3/20/24.
Accession Number: 20240320–5235.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER21–214–003.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Baltimore Gas and Electric Company submits tariff filing per 35: BGE Compliance Filing in ER21–214 to be effective 1/1/2021.
Filed Date: 3/25/24.
Accession Number: 20240325–5128.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER22–871–002; ER22–2925–002; ER22–2926–002.
Applicants: Jicarilla Storage 1 LLC, Jicarilla Solar 1 LLC, Jicarilla Solar 2 LLC.
Description: Notice of Change in Status of Jicarilla Solar 2 LLC, et al.
Filed Date: 3/25/24.
Accession Number: 20240325–5259.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER24–1606–000.
Applicants: Sol Systems LLC.
Description: Petition for Limited Waiver of Sol Systems, LLC.
Filed Date: 3/22/24.
Accession Number: 20240322–5264.
Comment Date: 5 p.m. ET 4/12/24.
Docket Numbers: ER24–1607–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Ministerial Clean-Up Filing for Tariff, Schedule 12—Appendix A to be effective 4/5/2023.
Filed Date: 3/25/24.
Accession Number: 20240325–5112.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER24–1608–000.
Applicants: Hardin Solar Energy III, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 3/26/2024.
Filed Date: 3/25/24.
Accession Number: 20240325–5160.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER24–1609–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA No. 6555 & ICSA No. 6556, AC1–086 (amend_mcd) to be effective 5/25/2024.
Filed Date: 3/25/24.
Accession Number: 20240325–5168.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER24–1610–000.
Applicants: Basin Electric Power Cooperative.
Description: § 205(d) Rate Filing: Basin Electric Power Cooperative, Submission of Revised Rate Schedule A to be effective 5/24/2024.
Filed Date: 3/25/24.
Accession Number: 20240325–5175.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER24–1611–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Pine Belt Solar LGIA Filing to be effective 3/12/2024.
Filed Date: 3/25/24.
Accession Number: 20240325–5177.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER24–1612–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: OATT Revised Attachment H–1—(Rev Depreciation Rates 2024) to be effective 6/1/2024.
Filed Date: 3/25/24.
Accession Number: 20240325–5186.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER24–1613–000.
Applicants: Wisconsin Public Service Corporation.
Description: Tariff Amendment: Notices of Cancellation of WPSC Rate Schedule Nos. 97 and 101 to be effective 2/1/2024.
Filed Date: 3/25/24.
Accession Number: 20240325–5235.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: ER24–1614–000.
Applicants: Orange and Rockland Utilities, Inc., New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Orange and Rockland Utilities, Inc. submits tariff filing per 35.13(a)(2)(iii: O&R Proposed FR Template and Protocols in Rate Schedules 10 and 19 to be effective 5/25/2024.
Filed Date: 3/25/24.
Accession Number: 20240325–5244.
Comment Date: 5 p.m. ET 4/15/24.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24–25–000.
Applicants: PJM Settlement, Inc.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of PJM Settlement, Inc.
Filed Date: 3/22/24.
Accession Number: 20240322–5226.
Comment Date: 5 p.m. ET 4/12/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06769 Filed 3–29–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP24–75–000; PF23–2–000]

Sabine Pass Liquefaction, LLC; Sabine Pass Liquefaction Stage, V, LLC; Sabine Crossing, LLC; Notice Accepting Application

Take notice that on February 29, 2024, Sabine Pass Liquefaction, LLC; Sabine Pass Liquefaction Stage V, LLC (collectively, Sabine Pass); and Sabine Crossing, LLC (Sabine Crossing), 845 Texas Avenue, Houston, Texas 77002, jointly filed an application under sections 3 and 7 of the Natural Gas Act (NGA) and parts 153 and 157 of the Commission's regulations requesting

authorization to site, construct, and operate the Sabine Pass Stage 5 Expansion Project and to construct the Sabine Crossing Pipeline Project. On March 13, 2024, Sabine Crossing withdrew its Sabine Crossing Pipeline Project from the joint application.[1]

Sabine Pass requests authorization to expand the liquefied natural gas (LNG) facility in Cameron Parish, Louisiana (SPLNG Terminal) by constructing (1) two liquefaction trains, each with a liquefaction nameplate capacity of approximately 7.0 million tonnes per annum; (2) two 220,000 cubic meter LNG full-containment, above-ground storage tanks; (3) new LNG loading lines; (4) a new roll-on, roll-off dock; (5) a new LNG spill collection system; and (6) other appurtenances, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions regarding the proposed project should be directed to Karri Mahmoud, Cheniere Energy, Inc., 845 Texas Avenue, Suite 1500, Houston, Texas 77002, by phone at (713) 375–5544, or by email at *Karri.Mahmoud@cheniere.com.*

On May 30, 2023, the Commission granted Sabine Pass' request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF23–2–000 to staff activities involved in the Project. Now, as of the filing of the February 29, 2024, application, the Pre-Filing Process for SPLNG's Sabine Pass Stage 5 Expansion Project has ended. From this time forward, this proceeding will be conducted in Docket No. CP24–75–000 as noted in the caption of this Notice. The Pre-Filing Process will continue for the Sabine Crossing Pipeline Project under Docket No. PF23–2–000.

In its withdrawal letter, Sabine Crossing states that it will resubmit an NGA section 7(c) application for the Sabine Crossing Pipeline Project following further development and modification of the project. Until the details of the revised Sabine Crossing Pipeline Project are filed and more fully understood, the Commission cannot begin preparation of a NEPA document. Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days after the Commission issues a Notice of Application for the revised Sabine Crossing Pipeline Project, Commission staff will issue a Notice of Schedule for Environmental Review that will indicate the anticipated date for Commission staff's issuance of the NEPA document analyzing both the Sabine Pass Stage 5 Expansion Project and the Sabine Crossing Pipeline Project. The issuance of a Notice of Schedule for Environmental Review will also serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of Commission staff's NEPA document.

The Commission is not soliciting comments, protests, or motions to intervene at this time. When Sabine Crossing files a revised application for the Sabine Crossing Pipeline Project, a notice will be issued establishing a deadline to file comments, protests, and motions to intervene for both the Sabine Crossing Pipeline Project and the Sabine Pass Stage 5 Expansion Project.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06773 Filed 3–29–24; 8:45 am]

BILLING CODE 6717–01–P

[1] The withdrawal of the application for the Sabine Crossing Pipeline will be effective on March 29, 2024, if not opposed. *See* 18 CFR 385.216 (2023); *see also* 18 CFR 157.6(a)(5) (2023).

[2] 18 CFR 157.9.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1588–000]

Double Black Diamond Solar Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Double Black Diamond Solar Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 15, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: March 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06768 Filed 3–29–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–562–000.

Applicants: Delta States Utilities NO. LA, LLC, CenterPoint Energy Resources Corp.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of CenterPoint Energy Resources Corp., et al..

Filed Date: 3/22/24.

Accession Number: 20240322–5210.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: RP24–563–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Statement of Rates—Updates Consolidation Filing to be effective 4/1/2024.

Filed Date: 3/25/24.

Accession Number: 20240325–5157.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: RP24–564–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Update Initial Retainage Rate 4–1–2024 to be effective 4/1/2024.

Filed Date: 3/25/24.

Accession Number: 20240325–5169.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: RP24–565–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Removed Expired Negotiated Rate Agreement to be effective 4/1/2024.

Filed Date: 3/25/24.

Accession Number: 20240325–5172.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: RP24–566–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Remove Expired Negotiated Rate Agreement to be effective 4/1/2024.

Filed Date: 3/25/24.

Accession Number: 20240325–5180.

Comment Date: 5 p.m. ET 4/8/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06774 Filed 3–29–24; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–08]

Agency Information Collection Activities; Standardized Instructions and Format To Be Used for Interim and Final Progress Reporting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: The Appraisal Subcommittee (ASC) is issuing this Notice of Request (Notice) for public comment on the standardized Appraisal Subcommittee Progress Report (ASC–PR) format to be used for both interim and final progress reporting for all ASC grants and submission to the Office of Management and Budget (OMB) of proposed collection of information. In conjunction with the Paperwork Reduction Act of 1995, the ASC has submitted to the OMB a request for review and approval of information collection listed below. The purpose of this Notice is to allow an additional 30 days for public comment from all interested individuals and organizations.

DATES: Written comments must be received on or before May 1, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: For information on the ASC–PR, contact Regeane Frederique, Grants Director, ASC at 202–792–1168 or *Regeane@asc.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on January 8, 2024 at 89 FR 917 and allowed 60 days for public comment. No comments were received to that notice.

Title: ASC Progress Report Standardized Instructions and Format for Interim and Final Progress Reporting

The ASC has established new grant-making programs and is responsible for monitoring its grantees on the use of federal funds. The ASC developed this progress report for both interim and final progress reports for grants issued under ASC authority. The progress report will be submitted to the ASC semi-annually as an attachment to the Standard Form 425, *Federal Financial Report.* A draft version of the instructions and format for the report is posted on the ASC website at *https://www.asc.gov/Documents/GrantsFundingCorrespondence/PR-FFR%20Reporting%20Instructions%20and%20Form.pdf.* The report will benefit award recipients by making it easier for them to administer federal grant and cooperative agreement programs through standardization of the types of information required in progress reports, thereby reducing their administrative effort and costs.

OMB Number: 3139–0010.

Burden Estimates:

Type of Review: Regular.

Affected Public: All ASC grantees.

Estimated Number of Respondents: 54.

Estimated Burden per Response: 1 hour.

Frequency of Response: Twice per year (semi-annual and annual report).

Estimated Total Annual Burden: 108 hours.

By the Appraisal Subcommittee.

James R. Park,

Executive Director.

[FR Doc. 2024–06796 Filed 3–29–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 16, 2024.

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. *Keith Markwardt, Buffalo, Minnesota, and Daniel Spiller, Minneapolis, Minnesota;* to become co-trustees of the Ella Elizabeth Meyerson 2008 Irrevocable GST Trust dated December 22, 2008, Atwater, Minnesota, which is a member of the Meyerson Family Control Group, a group acting in concert, and thus acquire control of voting shares of Cattail Bancshares, Inc., Atwater, Minnesota, and thereby indirectly acquire control of voting shares of Harvest Bank, Kimball, Minnesota, and Citizens State Bank of Waverly (Incorporated), Waverly, Minnesota.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri, 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *The Kathleen Albers Irrevocable Grantor Trust dtd 11–20–2012 and the Kathleen Albers Citizens National Corporation Trust ''S,'' Jeffry Albers, individually and as co-trustee, and Matthew Albers and Holly Schroeder, as co-trustees, all of Wisner, Nebraska;* to join the Albers Family Group, a group acting in concert, to retain voting shares of Citizens National Corporation and thereby indirectly retain voting shares of Citizens State Bank, both of Wisner, Nebraska. Jeffry Albers, Matthew Albers, and Holly Schroeder, all individually, were each previously permitted by the Federal Reserve System to acquire control of voting shares of Citizens National Corporation.

Board of Governors of the Federal Reserve System.

Erin Cayce,

Assistant Secretary of the Board.

[FR Doc. 2024–06854 Filed 3–29–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Solicitation of Applications for Membership on the Community Advisory Council

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) established the Community Advisory Council (the ''CAC'') as an advisory committee to the Board on issues affecting consumers and communities. This Notice advises individuals who wish to serve as CAC members of the opportunity to be considered for the CAC.

DATES: Applications received between Monday, April 1, 2024 and Friday, May 31, 2024 will be considered for selection to the CAC for terms beginning January 1, 2025.

ADDRESSES: Individuals who are interested in being considered for the CAC may submit an application via the Board's website or via email. The application can be accessed at *https://www.federalreserve.gov/secure/CAC/Application/.* Emailed submissions can be sent to *CCA-CAC@frb.gov.* The information required for consideration is described below.

If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop I–305, 20th Street and Constitution Ave. NW, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Jennifer Fernandez, Senior Community Development Analyst, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW, Washington, DC 20551, or (202) 452–2412, or *CCA-CAC@frb.gov.* Telecommunications Device for

the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board created the Community Advisory Council (CAC) as an advisory committee to the Board on issues affecting consumers and communities. The CAC is composed of a diverse group of experts and representatives of consumer and community development organizations and interests, including from such fields as affordable housing, community and economic development, employment and labor, financial services and technology, small business, and asset and wealth building. CAC members meet semiannually with the members of the Board in Washington, DC to provide a range of perspectives on the economic circumstances and financial services needs of consumers and communities, with a particular focus on the concerns of low- and moderate-income consumers and communities. The CAC complements two of the Board's other advisory councils—the Community Depository Institutions Advisory Council (CDIAC) and the Federal Advisory Council (FAC)—whose members represent depository institutions.

The CAC serves as a mechanism to gather feedback and perspectives on a wide range of policy matters and emerging issues of interest to the Board of Governors and aligns with the Federal Reserve's mission and current responsibilities. These responsibilities include, but are not limited to, banking supervision and regulatory compliance (including the enforcement of consumer protection laws), systemic risk oversight and monetary policy decision-making, and, in conjunction with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC), responsibility for implementation of the Community Reinvestment Act (CRA).

This Notice advises individuals of the opportunity to be considered for appointment to the CAC. To assist with the selection of CAC members, the Board will consider the information submitted by the candidate along with other publicly available information that it independently obtains.

Council Size and Terms

The CAC consists of at least 15 members. The Board will select members in the fall of 2024 to replace current members whose terms will expire on December 31, 2024. The newly appointed members will serve three-year terms that will begin on January 1, 2025. If a member vacates the CAC before the end of the three-year term, a replacement member will be appointed to fill the unexpired term.

Application

Candidates may submit applications by one of three options:

- *Online:* Complete the application form on the Board's website at *https://www.federalreserve.gov/secure/CAC/Application/.*
- *Email:* Submit all required information to *CCA-CAC@frb.gov.*
- *Postal Mail:* If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop I–305, 20th Street and Constitution Ave. NW, Washington, DC 20551.

Interested parties can view the current Privacy Act Statement at: *https://www.federalreserve.gov/aboutthefed/cac-privacy.htm.*

Below are the application fields. Asterisks (*) indicate required fields.[1]

- Salutation
- First Name *
- Middle Initial
- Last Name *
- Suffix
- Email Address *
- Phone Number *
- Postal Mail Street Address *
- Postal Mail City *
- Postal Mail State, Territory, or Federal District *
- Postal Zip Code *
- Organization *
- Title *
- Organization Type (select one) *
  - ○ For Profit
  - ▪ Community Development Financial Institution (CDFI)
  - ▪ Non-CDFI Financial Institution
  - ▪ Financial Services
  - ▪ Professional Services
  - ▪ Other
  - ○ Non-Profit
  - ▪ Advocacy
  - ▪ Association
  - ▪ Community Development Financial Institution (CDFI)
  - ▪ Educational Institution
  - ▪ Foundation
  - ▪ Service Provider
  - ▪ Think Tank/Policy Organization
  - ▪ Other
  - ○ Government
- Primary Area of Expertise (select one) *
  - ○ Civil rights
  - ○ Community development finance
  - ○ Community reinvestment and stabilization
  - ○ Consumer protection
  - ○ Economic and small business development
  - ○ Labor and workforce development
  - ○ Financial technology
  - ○ Household wealth building and financial stability
  - ○ Housing and mortgage finance
  - ○ Rural issues
  - ○ Other (please specify)
- Secondary Area of Expertise (select one)
  - ○ Civil rights
  - ○ Community development finance
  - ○ Community reinvestment and stabilization
  - ○ Consumer protection
  - ○ Economic and small business development
  - ○ Labor and workforce development
  - ○ Financial technology
  - ○ Household wealth building and financial stability
  - ○ Housing and mortgage finance
  - ○ Rural issues
  - ○ Other (please specify)
- Resume *
  - ○ The resume should include information about past and present positions you have held, dates of service for each, and a description of responsibilities.
- Cover Letter *
  - ○ The cover letter should explain why you are interested in serving on the CAC as well as what you believe are your primary qualifications.
- Additional Information
  - ○ At your option, you may also provide additional information about your qualifications.

Qualifications

The Board is interested in candidates with knowledge of fields such as affordable housing, community and economic development, employment and labor, financial services and technology, small business, and asset

[1] OMB Number 7100–0371. Approval expires March 31, 2025. Application is authorized pursuant to sections 2A and 10 of the Federal Reserve Act (12 U.S.C. 225a and 244). The obligation to respond is required to obtain the benefit of consideration for CAC membership. Information provided on the Application will be kept confidential under exemption (b)(6) of the Freedom of Information Act to the extent that the disclosure of information ''would constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)). Public reporting burden for this collection of information is estimated to average 1 hour, including the time to gather and maintain data in the required form, to review instructions, and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0371), Washington, DC 20503. The Federal Reserve may not conduct or sponsor, and an organization or a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

and wealth building, with a particular focus on the concerns of low- and moderate-income consumers and communities. Candidates do not have to be experts on all topics related to consumer financial services or community development, but they should possess some basic knowledge of these areas and related issues. In appointing members to the CAC, the Board will consider a number of factors, including diversity in terms of subject matter expertise, geographic representation, and the representation of women and minority groups.

CAC members must be willing and able to make the necessary time commitment to participate in organizational conference calls and prepare for and attend meetings two times per year (usually for two days). The meetings will be held at the Board's offices in Washington, DC. The Board will provide a nominal honorarium and will reimburse CAC members only for their actual travel expenses subject to Board policy.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, March 25, 2024.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–06766 Filed 3–29–24; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Nominations for the Board of Governors of the Patient-Centered Outcomes Research Institute (PCORI)

AGENCY: Government Accountability Office (GAO).

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Patient Protection and Affordable Care Act gave the Comptroller General of the United States responsibility for appointing up to 21 members to the Board of Governors of the Patient-Centered Outcomes Research Institute. In addition, the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, or their designees, are members of the Board. As the result of terms ending in September 2024, GAO is accepting nominations in the following category: a representative of a Federal health program or agency. Nominations should be sent to the email address listed below. Acknowledgement of receipt will be provided within a week of submission.

DATES: Letters of nomination and resumes should be submitted no later than May 3, 2024, to ensure adequate opportunity for review and consideration of nominees prior to appointment.

ADDRESSES: Submit letters of nomination and resumes to *PCORI@gao.gov.* Include PCORI nominations in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Ray Sendejas at (202) 512–7113 or *SendejasR@gao.gov* if you do not receive an acknowledgement or need additional information. For general information, contact GAO's Office of Public Affairs, (202) 512–4800.

Authority: 42 U.S.C. 1320e; 26 U.S.C. 9511.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2024–06777 Filed 3–29–24; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3441–N]

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Laboratories Licensed by the State of Washington

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces that laboratories located in and licensed by the State of Washington that possess a valid license under the Medical Test Site law, chapter 70.42 of the Revised Code of Washington, are exempt from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) for a period of 4 years.

DATES: The exemption granted by this notice is effective from April 1, 2024 to April 1, 2028.

FOR FURTHER INFORMATION CONTACT: Mary Hasan, (410) 786–6480.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 353 of the Public Health Service Act (PHSA), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578), which was enacted on October 31, 1988, generally provides that no laboratory may perform tests on human specimens for the diagnosis, prevention or treatment of any disease or impairment of, or assessment of the health of, human beings unless it has a certificate to perform that category of tests issued by the Secretary of the Department of Health and Human Services (HHS). Under section 1861(s)(17)(A) of the Social Security Act (the Act), the Medicare program will only pay for laboratory services if the laboratory has an appropriate CLIA certificate for the testing they conduct. Under section 1902(a)(9)(C) of the Act, State Medicaid plans will generally only pay for laboratory services furnished by CLIA-certified laboratories. Thus, although subject to specified exemptions and exceptions, laboratories generally must have a current and valid CLIA certificate to test human specimens for the purposes noted above to be eligible for payment for those tests by the Medicare or Medicaid programs. Regulations implementing section 353 of the PHSA are contained in 42 CFR part 493.

Section 353(p)(2) of the PHSA provides for the exemption of laboratories from CLIA requirements in States that enact legal requirements that are equal to or more stringent than CLIA's statutory and regulatory requirements. Section 353(p)(2) of the PHSA is implemented in subpart E of our regulations at 42 CFR part 493. Sections 493.551(a) and 493.553 provide that CMS may exempt from CLIA requirements, for a period not to exceed 6 years, all State-licensed or State-approved laboratories in a State if the State licensure program meets the specified conditions. Section 493.559(a) provides that CMS will publish a notice in the **Federal Register** when CMS grants an exemption to an approved State licensure program. Section 493.559(b) provides that the notice will include the following:

- The name of the State licensure program.
- A description of how the laboratory requirements of the State are equal to or more stringent than those of part 493.
- The basis for granting the exemption.
- The term of approval, not to exceed 6 years.

A. State of Washington's Application for CLIA Exemption of Its Laboratories

The State of Washington has applied for exemption of its laboratories from CLIA program requirements. The State of Washington submitted all the applicable information and attestations required by §§ 493.551(a), 493.553, and

493.557(b) for State licensure programs seeking exemption of their licensed laboratories from CLIA program requirements. Examples of documents and information submitted include: a comparison of its laboratory licensure requirements with the comparable CLIA condition-level requirements (that is, a crosswalk); and a description of the following: its inspection process; its proficiency testing (PT) monitoring process; its data management and analysis system; its investigative and response procedures for complaints received against laboratories; and its policy regarding announced and unannounced inspections.

B. CMS Analysis of Washington's Application and Supporting Documentation

To determine whether CMS should grant a CLIA exemption to laboratories licensed by a State, CMS reviews the application and additional documentation that the State submits to us and conducts a detailed and in-depth comparison of the State licensure program and CLIA's statutory and regulatory requirements to determine whether the State licensure program meets the requirements in part 493.

In summary, the State generally must demonstrate that:

- It has State laws in effect that provide for a State licensure program that has requirements that are equal to, or more stringent than, CLIA condition-level requirements for laboratories.
- It has implemented a State licensure program with requirements that are equal to, or more stringent than, the CLIA condition-level requirements such that a laboratory licensed by the State program would meet the CLIA condition-level requirements if it were inspected against those requirements.
- The requirements under that State licensure program meet or exceed the requirements of §§ 493.553, 493.555, and 493.557(b) and is suitable for approval by CMS under § 493.553(b)(3). For example, among other things, the program would need to:

++ Demonstrate that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements.

++ Permit CMS or CMS agents to inspect laboratories within the State.

++ Require laboratories within the State to submit to inspections by CMS or CMS agents as a condition of licensure.

++ Agree to pay any costs associated with our activities to validate its State licensure program as specified in § 493.557(b)(4) as well as the State's pro rata share of the general overhead to develop and implement CLIA as specified in § 493.649(a).

++ Take appropriate enforcement action against laboratories found by CMS or CMS agents to be out of compliance with requirements equivalent to CLIA requirements, as specified in § 493.557(b).

As specified in our regulations at §§ 493.555 and 493.557(b), our review of a State licensure program includes (but is not necessarily limited to) an evaluation of the following:

- Whether the State's requirements for laboratories are equal to, or more stringent than, the CLIA condition-level requirements.
- The State's inspection process requirements to determine the following:

++ The comparability of the full inspection and complaint inspection procedures to those of CMS, including, but not limited to, inspection frequency and the ability to investigate and respond to complaints against its laboratories.

++ The State's enforcement procedures for laboratories found to be out of compliance with its requirements.

- The ability of the State to provide CMS with electronic data and reports with the adverse or corrective actions resulting from PT results that constitute unsuccessful participation in CMS-approved PT programs and with other data CMS determines to be necessary for validation review and assessment of the State's inspection process requirements.
- The State's agreement with CMS that requires the State to do the following:

++ Notify CMS within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval suspended, withdrawn, revoked, or limited; been in any way sanctioned; or had any adverse action taken against it.

++ Notify CMS within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases when the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.

++ Notify each laboratory licensed by the State under its approved State licensure program within 10 days of a withdrawal of our approval of the State's licensure program, and the resulting loss of the laboratory's exemption from CLIA based on its licensure under that program.

++ Provide CMS with written notification of any changes in the State's licensure (or approval) and inspection requirements.

++ Disclose to CMS or CMS' agent any laboratory's PT results in accordance with the State's confidentiality requirements.

++ Take appropriate enforcement action against laboratories that CMS or CMS agents find to be out of compliance with CLIA condition-level requirements and report these enforcement actions to CMS.

++ Notify CMS within 30 days of all newly licensed laboratories, including the specialty and subspecialty areas of testing, and notify CMS of any changes in the specialties and subspecialties for which any licensed laboratory in the State performs testing.

++ Provide CMS with inspection schedules, as requested, for validation purposes.

In keeping with the process described above, CMS evaluated the application and supporting materials that were submitted by Washington State to verify that the laboratories licensed through its program will meet or exceed the requirements of the following subparts of part 493:

- Subpart H, Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing;
- Subpart J, Facility Administration for Nonwaived Testing;
- Subpart K, Quality Systems for Nonwaived Testing,
- Subpart M, Personnel for Nonwaived Testing;
- Subpart Q, Inspection; and
- Subpart R, Enforcement Procedures.

CMS found that Washington State's laboratory licensure program requirements mapped to all the CLIA condition-level requirements. The State licensure program's inspection process and PT monitoring processes were adequate. Other materials that were submitted demonstrated compliance with the other above-referenced requirements of subpart E of part 493. As a result, CMS concluded that the submitted documents supported exempting laboratories licensed under that program from the CLIA program requirements. Furthermore, a review of our validation inspections conducted by the CMS office in Seattle, Washington, supported this conclusion.

The Federal validation inspections of CLIA-exempt laboratories, as specified in § 493.563, were conducted on a representative sample basis, as well as in response to any substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections has been and will continue to be our principal tool for verifying that the laboratories located in, and licensed by, the State are in compliance with CLIA requirements.

The CMS office in Seattle, Washington, has conducted validation inspections of a representative sample of the laboratories inspected by the Washington State Office of Laboratory Quality Assurance (LQA). The validation inspections were primarily of the concurrent type; that is, our surveyors accompanied Washington State's inspectors, each inspecting against his or her agency's respective regulations. Analysis of the validation data revealed no significant differences between the State and Federal findings. The validation surveys verified that the State of Washington inspection process covers all CLIA conditions applicable to each laboratory being inspected and also verified that the State laboratory licensure requirements meet or exceed CLIA condition-level requirements. The validation surveys found the State inspectors highly skilled and qualified. The LQA inspected laboratories in a timely fashion; that is, all laboratories were inspected within the required 24-month cycle. All parameters monitored by the CMS office in Seattle, Washington, to date, indicate that the State of Washington is meeting all requirements for approval of CLIA exemption. This Federal monitoring will continue as an on-going process.

C. Conclusion

Based on review of the documents submitted by the Washington State licensure program under the requirements of subpart E of part 493, as well as the outcome of the validation inspections conducted by the CMS office in Seattle, Washington, CMS finds that the State of Washington's licensure program meets the requirements of § 493.553(a), and that, as a result, CMS may exempt all State-licensed laboratories from CLIA program requirements.

Approval of the CLIA exemption for laboratories located within and licensed by the State of Washington laboratory licensure program is subject to removal if CMS determines that the outcome of a comparability review or a validation review inspection is not acceptable, as described under §§ 493.573 and 493.575, or if the State of Washington fails to pay the required fee every 2 years as required under § 493.649.

D. Laboratory Data

The approval of this exemption for laboratories located within and licensed by the State of Washington is conditioned on the State of Washington's continued compliance with the assertions made in its application, including the provision of information to us in accordance with our regulations at § 493.557(b)(8) about changes to a laboratory's specialties or subspecialties based on the State's survey, and changes to a laboratory's certification status.

E. Required Administrative Actions

CLIA is a user-fee funded program. The registration fee paid by laboratories is intended to cover the cost of the development and administration of the program. However, when a State's application for exemption is approved, CMS does not charge a fee to laboratories in the State. The State's share of the costs associated with CLIA must be collected from the State, as specified in § 493.649.

The State of Washington must pay for the following:

- Costs of Federal inspections of laboratories in the State to verify that standards are being enforced in an appropriate manner.
- Costs incurred for investigations of complaints against State of Washington laboratories if the complaint is substantiated.
- The State's pro rata share of general overhead to administer the laboratory certification program under section 353 of the PHS Act.

To estimate the State of Washington's proportionate share of the general overhead costs to develop and implement CLIA, CMS determined the ratio of laboratories in the State to the total number of laboratories nationally. Approximately 1.9 percent of the registered laboratories are in the State of Washington. CMS determined that a corresponding percentage of the applicable CMS, CDC, FDA, and their respective contractor costs should be borne by the State of Washington.

The State of Washington has agreed to pay the State's pro rata share of the anticipated overhead costs and costs of actual validation (including complaint investigation surveys) as specified in § 493.655(b). A final reconciliation for all laboratories and all expenses will be made. CMS will reimburse the State for any overpayment or bill it for any balance.

II. Approval

In light of the foregoing, CMS grants approval of the State of Washington's laboratory licensure program under subpart E. All laboratories located in and licensed by the State of Washington under the Medical Test Site law, chapter 70.42 of the Revised Code of Washington, are CLIA-exempt for all specialties and subspecialties until April 1, 2028.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Trenesha Fultz-Mimms,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–06802 Filed 3–29–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Immigration Legal Services for Afghan Arrivals—Eligible Afghan Arrivals Intake Form and Intake Interview (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data from Eligible Afghan Arrivals (EAAs) in need of direct legal services through Immigration Legal Services for Afghan Arrivals (ILSAA) to determine eligibility.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: In August 2021, Operation Allies Welcome (OAW) was established at President Biden's direction to implement coordinated efforts across the federal government to support vulnerable Afghans, including those who worked alongside the U.S. in Afghanistan (OAW, Homeland Security (*https://www.dhs.gov/allieswelcome*)). Under the Afghanistan Supplemental Appropriations Act, 2022, and Additional Afghanistan Supplemental Appropriations Act, 2022, Congress authorized ORR to provide resettlement assistance and other benefits available to refugees to specific Afghan populations in response to their emergency evacuation and resettlement. ILSAA was established to provide immigration legal services to EAAs. The ILSAA EAA Intake Form and Intake Interview are designed to gather information about EAAs who are interested in receiving legal services through ILSAA. ILSAA staff will review the EAA's information to determine whether they meet the qualifications to receive legal services through ILSAA. This will be done on a rolling basis as EAAs seek legal services through ILSAA.

Respondents: OAW Afghan Populations.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Total number of responses per respondent	Average burden hours per response	Annual burden hours
Eligible Afghan Arrival (EAA) Intake Form	2,000	1	0.08	160
Eligible Afghan Arrival (EAA) Intake Interview	1,600	1	0.75	1,200

Estimated Total Annual Burden Hours: 1,360.

Authority: Division C, Title III, Public Law 117–43,135 Stat. 374; Division B, Title III, Public Law 117–70, 1102 Stat. 4.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–06832 Filed 3–29–24; 8:45 am]

BILLING CODE 4184–89–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; of the ACL Generic Clearance for the Collection of Routine Customer Feedback OMB 0985–NEW

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the ACL Generic Clearance for the Collection of Routine Customer Feedback OMB 0985–NEW.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EDT) or postmarked by May 1, 2024.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Tomakie Washington, Administration for Community Living, Washington, DC 20201, (202) 795–7336 or *Tomakie.Washington@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act (44 U.S.C. 3506), the Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. The Administration for Community Living (ACL) at the Department of Health and Human Services (HHS) is requesting a generic clearance for purposes collecting data with a focus on the awareness, understanding, attitudes, preferences, or experiences of customers or other stakeholders relating to existing or future services, products, or communication materials. ACL defines routine customer feedback as information that provides useful insights to improve existing or future service deliveries, products, or communication materials; responses are voluntary: the collection does not impose a significant burden on respondents; the collection does not employ statistical methods to have practical utility; and the data results are not publicly shared.

The types of information collection activities will include:

1. Customer Comment Card/Complaint Form
2. Customer Satisfaction Qualitative Surveys
3. Technical Assistance
4. Usability Testing (*e.g.,* Website or Software)
5. Small Discussion Group
6. Focus Group
7. One-time or panel discussion groups
8. Moderated, un-moderated, in-person, and/or remote-usability studies
9. Testing of a survey or other collection to refine questions
10. Post-transaction customer surveys
11. On-line surveys

ACL was created around the fundamental principle that older adults and people of all ages with disabilities should be able to live where they choose, with the people they choose, and with the ability to participate fully in their communities. By funding services and supports provided primarily by networks of community-based organizations, and with investments in research, education, and innovation, ACL helps make this principle a reality for millions of Americans. Integral to this role, ACL will use this mechanism to conduct routine customer feedback for ACL programs.

Comments in Response to the 60-Day Federal Register Notice

A 60-day notice published in the **Federal Register** at 88 FR 78370 on

November 15, 2023. During the 60-day comment period, ACL received five public comments. A portion from two public comments which directly related to the collection of routine customer feedback and ACL's response are listed in the below table. To view unrelated comments in entirety, visit *www.reginfo.gov/public/do/PRAMain and select* the proposed information collection record.

Commenter	Comment	ACL response
Harris T. Capps, Major US AF, retired.	Feedback to ACL should be a part of an HHS, and an ACL quality management program to serve as a powerful tool for monitoring, evaluating, and improving processes, products, and services, ultimately contributing to the organization's overall success. It can provide: a. Performance Evaluation c. Identification of Issues/Problems Transparency and Communication d. Continuous Improvement, especially regarding Customer Satisfaction & Quality of Services, etc.	Thank you for your service. ACL acknowledges receipt of comment. This proposed data collection will collect Routine Customer Feedback related to ACL program data under the below listed topics. Thank you for providing feedback on (1) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates; and (2) ways to enhance the quality, utility, and clarity of the information to be collected.
Rebecca Underwood	How will the participants be selected for small discussion groups, focus groups, and panel discussion groups?	Thank you for providing feedback on your concerns related to the selection of participants in customer satisfaction small discussion groups, focus groups, and panel discussion groups. Please note the terms of usage for this type of information collection requires the collection is targeted to the solicitation of opinions from respondents who have experience with the program services provided or may have experience with the program in the future. Such services as technical assistance, general solicitation, and suggestions for public meeting topics. Terms of usage for a Generic/Fast Track information collection do not cover the same terms applicable to program specific collections of information when data is most likely publicly reported, please visit *https://acl.gov/* Data, Research, and Issues tab to view such findings.

Estimated Program Burden

ACL estimates the burden of this collection of information as follows: The annual burden hours (2,521) requested, and the anticipated number of respondents (10,086) are based on the number of potential customer feedback respondents. Over the course of a three-year clearance for this generic information collection, ACL estimates a three-year burden drawdown amount of 7,564.5 burden hours and 30,258 respondents.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form	Annual number of respondents	Number of responses per respondent	Burden hours per response	Total annual burden hours
ACL Potential Customer or Stakeholder.	ACL Generic Clearance for the Collection of Routine Customer Feedback.	10,086	1	.25	2,521

Dated: March 26, 2024.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2024–06789 Filed 3–29–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3953]

Providing Regulatory Submissions in Electronic Format: Investigational New Drug Application Safety Reports; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format: IND Safety Reports.'' This guidance finalizes the draft guidance of the same name published on October 30, 2019, and describes the electronic format sponsors will be required to use when they electronically submit investigational new drug application (IND) safety reports to the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) for serious and unexpected suspected adverse reactions, as required by FDA regulations. FDA is establishing the electronic format requirements described in this guidance under the Federal Food, Drug, and Cosmetic Act

(FD&C Act). The requirements in the guidance will be effective 24 months after the date of publication (April 1, 2026). Certain sponsors will be required to submit the specified IND safety reports electronically to FDA using the FDA Adverse Event Reporting System (FAERS) as structured data elements, which will provide sponsors with a reporting format that is consistent with the International Council for Harmonisation (ICH) E2B format guidelines and reporting requirements to other regulatory agencies.

DATES: The announcement of the guidance is published in the **Federal Register** on April 1, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–3953 for ''Providing Regulatory Submissions in Electronic Format: IND Safety Reports.'' 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 this 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; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, 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: Suranjan De, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4307, Silver Spring, MD 20993–0002, 240–402–0498; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format: IND Safety Reports.'' This guidance finalizes the draft guidance of the same name published on October 30, 2019 (84 FR 58158), and describes the electronic format sponsors will be required to use when they electronically submit IND safety reports to CDER and CBER for serious and unexpected suspected adverse reactions, as required under 21 CFR 312.32(c)(1)(i). FDA is establishing the electronic format requirements described in this final guidance under section 745A(a) of the FD&C Act (21 U.S.C. 379k–1(a)). Certain sponsors will be required to submit the specified IND safety reports electronically to FDA using FAERS as structured data elements. This will provide sponsors with a reporting format that is consistent with the ICH E2B format guidelines and reporting requirements to other regulatory agencies. Additional technical specification documents and instructions for submitting IND safety reports, including ''Electronic Submission of IND Safety Reports Technical Conformance Guide'' and the technical specifications document entitled ''Technical Specifications Document—FDA Regional Implementation Guide for E2B(R3) Electronic Transmission of Individual Case Safety Reports for Drug and Biological Products,'' are available on the FDA Adverse Event Reporting System (FAERS) Electronic Submissions—E2B(R3) Standards web page (available at: *https://www.fda.gov/*

drugs/questions-and-answers-fdas-adverse-event-reporting-system-faers/fda-adverse-event-reporting-system-faers-electronic-submissions-e2br3-standards).

The electronic format requirements specified in this guidance will be effective 24 months after the publication of this guidance (April 1, 2026). Before the effective date of this requirement, FDA will accept the IND safety reports described in this guidance to FAERS as part of a voluntary submission program.

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 ''Providing Regulatory Submissions in Electronic Format: IND Safety Reports.'' 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. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information under 21 CFR 312.10 for submitting waiver requests and in 21 CFR 312.32 for submitting IND safety reports and reporting serious and unexpected suspected adverse events have been approved under OMB control number 0910–0014. The collections of information for submitting Forms FDA 3500 and 3500A, and for FDA adverse event reporting and electronic submissions using the Electronic Submission Gateway and the Safety Reporting Portal have been approved under OMB control number 0910–0291. The collections of information for submitting periodic adverse drug experience reports have been approved under OMB control number 0910–0230. The collections of information for submitting FAERS reports have been approved under 0910–0308.

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/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: March 25, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06736 Filed 3–29–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting conducted as a webcast on April 30, 2024. This virtual meeting will be open to the public. Registration is required for the public to attend the meeting, provide comment, and/or distribute material(s) to the ACMH members. Instructions regarding participating in the call and providing written or verbal public comments will be provided after meeting registration occurs.

DATES: The ACMH meeting will be held on April 30, 2024 from 11 a.m. to 12:30 p.m. EDT. If the Committee completes its work before 12:30 p.m., the meeting will adjourn early.

Any individual who wishes to participate in the virtual meeting should register using the Zoom registration link provided below by 5 p.m. EDT on April 24, 2024.

ADDRESSES: The meeting will be held virtually and will be accessible by webcast. Instructions regarding webcast access and providing written or verbal public comments will be given after meeting registration occurs.

FOR FURTHER INFORMATION CONTACT: Violet Woo, Designated Federal Officer, Advisory Committee on Minority Health, OMH, HHS, Tower Building, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852. Phone: 240–453–6816; email: *OMH-ACMH@hhs.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health on the development of goals and program activities related to OMH's duties.

The topics to be discussed during the virtual meeting will be finalizing the recommendations on how OMH and HHS can support community awareness, education and engagement on HHS efforts to implement the revised Office of Management and Budget (OMB) Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15). The final recommendations will be given to the Deputy Assistant Secretary for Minority Health to inform efforts related to implementation of the revised OMB standards. Information on OMB's Interagency Technical Working Group on Race and Ethnicity Standards can be found on this website: *spd15revision.gov*.

Information about the meeting will be posted on the HHS Office of Minority Health (OMH) website: *www.minorityhealth.hhs.gov*. Information about ACMH activities can be found on the OMH website under the heading *About OMH, Committees and Working Groups*.

Any individual who wishes to attend the meeting must register via the Zoom registration link, *https://www.zoomgov.com/meeting/register/vJIscuuhqzIqHX5wssDFc84ZH-6jdn4NgZg,* by 5 p.m. EDT on April 24, 2024. Each registrant should provide their name, affiliation, phone number, email address, if they plan to provide either written or verbal comment, and whether they have requests for special accommodations, including sign language interpretation. After registering, registrants will receive an automated email response with the meeting connection link. The meeting connection link is unique to each registrant and should not be shared.

Members of the public will have an opportunity to provide comments at the meeting. Individuals should indicate during registration whether they intend to provide written or verbal comment. Public comments will be limited to two minutes per speaker during the time allotted. Written statements are limited to two pages. If the two-page limit is exceeded, the full statement will not be included. Registered members of the public who plan to submit and distribute electronic or printed public statements or material(s) related to this meeting's topic should email the material to *OMH-ACMH@hhs.gov* at least five (5) business days prior to the meeting.

Dated: March 25, 2024.

Violet Woo,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2024–06850 Filed 3–29–24; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0263]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 31, 2024.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041 and *PRA@HHS.GOV.*

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0263–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov, PRA@HHS.GOV* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption Form.

Type of Collection: Renewal, three-year extension with non-substantive changes for the *Protection of Human Subjects:* Assurance Identification/IRB Certification/Declaration of Exemption Form OMB No. 0990–0263 Office of the Assistant Secretary for Health, Office for Human Research Protections.

Abstract: The Office of the Assistant Secretary for Health, Office for Human Research Protections is requesting is requesting a three-year extension with non-substantive changes of the Protection of Human Subjects: Assurance Identification/IRB Certification/Declaration of Exemption Form, OMB No. 0990–0263.

The information collected on the form is to provide a simplified method for institutions engaged in research conducted or supported by the Department of Health and Human Services (HHS) to satisfy the requirements of HHS regulations for the protection of human subjects at 45 CFR 46.103 for assurance identification and institutional review board (IRB) certification and declare exemption status. Non-substantive changes include adding instructions that, if additional assurances apply, those details can be indicated in the ''Comments'' section and clarifying that the form element for IRB expiration date does not apply to all projects.

Likely Respondents: Institutions engaged in research involving human subjects where the research is supported by HHS. Institutional use of the form is also relied upon by other Federal departments and agencies that have codified or follow the Federal Policy for the Protection of Human Subjects (Common Rule), which is codified for HHS at 45 CFR part 46, subpart A.

ANNUALIZED BURDEN HOUR TABLE

Form name	Number of respondents	Number of responses per respondent	Hours per response	Response burden hours
Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption	13,000	2	0.5	13,000

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2024–06803 Filed 3–29–24; 8:45 am]

BILLING CODE 4150–36–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 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grants (R34); NIAID Clinical Trial Implementation Cooperative Agreement (U01); NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44); Investigator Initiated Extended Clinical Trial (R01).

Date: April 30–May 1, 2024.

Time: 9:30 a.m. to 4:30 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 3F21B, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Maryam Feili-Hariri, 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 3F21B, Rockville, MD 20852, 240–669–5026, *haririmf@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 26, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06859 Filed 3–29–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a 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 materials, 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: Biomedical Informatics, Library and Data Sciences Review Committee (BILDS).

Date: June 13–14, 2024.

Time: June 13, 2024, 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Date: June 14, 2024, 9:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zoe E. Huang, M.D., Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, National Institutes of Health (NIH), 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 27, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06860 Filed 3–29–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Collaborative and Innovative Acceleration Awards.

Date: May 30, 2024.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1068, Bethesda, MD 20892, (301) 435–0810, *lourdes.ponce@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: March 26, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06788 Filed 3–29–24; 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 Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: April 29, 2024.

Time: 10:00 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: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, 301–408–9916, *sizemoren@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 27, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06858 Filed 3–29–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Gabriella Miller Kids First Conflict Review.

Date: May 31, 2024.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review

Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402–8739, *pozzattr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 27, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06861 Filed 3–29–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT: Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Flanagan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** during the first week of each month, in accordance with section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list*.

HHS separately notifies Federal agencies of the laboratories and IITFs currently certified to meet the standards of the Mandatory Guidelines using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23, 2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare *, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295 (Formerly: Legacy Laboratory Services Toxicology MetroLab)

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Omega Laboratories, Inc.*, 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289–919–3188

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories continued under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory as meeting the minimum standards of the current Mandatory Guidelines published in the **Federal Register**. After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program. DOT established this process in July 1996 (61 FR 37015) to allow foreign laboratories to participate in the DOT drug testing program.

Anastasia D. Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2024–06808 Filed 3–29–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0188]

National Boating Safety Advisory Committee; Vacancies

AGENCY: United States Coast Guard, Department of Homeland Security.

ACTION: Notice; request for applications.

SUMMARY: The U.S. Coast Guard is accepting applications to fill four vacancies on the National Boating Safety Advisory Committee (Committee). This Committee advises the Secretary of Homeland Security, via the Commandant of the U.S. Coast Guard, on matters relating to national recreational boating safety.

DATES: Completed applications must reach the U.S. Coast Guard on or before May 1, 2024.

ADDRESSES: Applications must include (a) a cover letter expressing interest in an appointment to the National Boating Safety Advisory Committee, (b) a resume detailing the applicant's relevant experience for the position applied for, and (c) a brief biography. Applications should be submitted via email with the subject line ''Application for NBSAC'' to Mr. Thomas Guess at *NBSAC@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Guess, Alternate Designated Federal Officer of the National Boating Safety Advisory Committee; telephone 206–815–0221 or email at *NBSAC@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Committee is a Federal advisory committee. The Committee was established by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* (Pub. L. 115–282, 132 Stat. 4192), and is codified in 46 U.S.C. 15105. The Committee must operate under the provisions of the *Federal Advisory Committee Act,* (Pub. L. 117–286, 5 U.S.C. ch. 10), and 46 U.S.C. 15109. The National Boating Safety Advisory Committee provides advice to, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the U.S. Coast Guard, on matters relating to national recreational boating safety.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee will hold meetings at least twice a year, but it may meet more frequently.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31st of the third full year after the effective date of your appointment. The Secretary of Homeland Security may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

All members serve at their own expense and receive no salary or other compensation from the Federal Government. The only compensation

the members may receive is for travel expenses, including per diem in lieu of subsistence, and actual reasonable expenses incurred in the performance of their direct duties for the Committee in accordance with Federal Travel Regulations. If you are appointed as a member of the Committee, you will be required to sign a Non-Disclosure Agreement and a Gratuitous Services Agreement.

In this solicitation for Committee members, we will consider applications for four positions as members representing recreational boating organizations.

Each member of the Committee serves as a representative and must have particular expertise, knowledge, and experience in matters relating to the function of the Committee, which is to advise the Secretary of Homeland Security on the matters described above.

The members who will fill the positions will be appointed as representatives to represent the position described above and are not Special Government Employees as defined in 18 U.S.C. 202(a).

In order for the Department, to fully leverage broad-ranging experience and education, the National Boating Safety Advisory Committee must be diverse with regard to professional and technical expertise. The Department is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the Nation's people.

If you are interested in applying to become a member of the Committee, email your application to *NBSAC@uscg.mil* as provided in the **ADDRESSES** section of this notice. Applications must include: (1) a cover letter expressing interest in an appointment to the National Boating Safety Advisory Committee; (2) a resume detailing the applicant's relevant experience and (3) a brief biography of the applicant by the deadline in the **DATES** section of this notice.

The U.S. Coast Guard will not consider incomplete or late applications.

Privacy Act Statement

Purpose: To obtain qualified applicants to fill four vacancies on the National Boating Safety Advisory Committee. When you apply for appointment to the DHS' National Boating Safety Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. DHS will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly available Committee documents, membership lists, and Committee reports.

Authorities: 14 U.S.C. 504; 46 U.S.C. 15105 and 15109; 18 U.S.C. 202(a), and Department of Homeland Security Delegation No. 00915.

Routine Uses: Authorized U.S. Coast Guard personnel will use this information to consider and obtain qualified candidates to serve on the Committee. Any external disclosures of information within this record will be made in accordance with DHS/ALL–009, Department of Homeland Security Advisory Committee (73 FR 57642, October 3, 2008).

Consequences of Failure to Provide Information: Furnishing this information is voluntary. However, failure to furnish the requested information may result in your application not being considered for the Committee.

Dated: March 27, 2024.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2024–06797 Filed 3–29–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2420]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before July 1, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2420, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the

revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Turner County, Georgia and Incorporated Areas Project: 18–04–0004S Preliminary Date: April 21, 2023	
City of Ashburn	City Hall, 259 East Washington Avenue, Ashburn, GA 31714.
City of Sycamore	City Hall, 39 East Willis Street, Sycamore, GA 31790.
Unincorporated Areas of Turner County	Turner County Courthouse Annex, 208 East College Avenue, Ashburn, GA 31714.
Worth County, Georgia and Incorporated Areas Project: 18–04–0005S Preliminary Date: April 21, 2023	
City of Poulan	City Hall, 204 Hunton Street Southwest, Poulan, GA 31781.
City of Sylvester	Community Development, 102 South Main Street, Sylvester, GA 31791.
Town of Sumner	Town Hall, 706 Walnut Street, Sumner, GA 31789.
Unincorporated Areas of Worth County	Worth County Building and Zoning, 204 East Franklin Street, Suite 16, Sylvester, GA 31791.
El Paso County, Texas and Incorporated Areas Project: 17–06–1114S Preliminary Date: November 15, 2023	
City of El Paso	City 3 Building, 801 Texas Avenue, El Paso, TX 79901.
City of San Elizario	City Hall, 12710 Church Street, San Elizario, TX 79849.
City of Socorro	City Hall, 860 North Rio Vista Road, Socorro, TX 79927.
Town of Anthony	Town Hall, 401 Wildcat Drive, Anthony, TX 79821.
Town of Clint	Town Hall, 200 North San Elizario Road, Clint, TX 79836.
Unincorporated Areas of El Paso County	El Paso County Public Works Department, 800 East Overland Avenue, Suite 200, El Paso, TX 79901.
Village of Vinton	Village Hall, 436 East Vinton Road, Vinton, TX 79821.
Ysleta Del Sur Pueblo of Texas	Ysleta Del Sur Pueblo of Texas Public Safety Emergency Management Division, 119 South Old Pueblo Road, El Paso, TX 79907.

[FR Doc. 2024–06782 Filed 3–29–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2422]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before July 1, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/*

prelimdownload and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2422, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Tift County, Georgia and Incorporated Areas Project: 18–04–0005S Preliminary Date: April 21, 2023	
City of Omega	City Hall, 5518 North Alabama Avenue, Omega, GA 31775.
City of Tifton	City Hall, 130 1st Street East, Tifton, GA 31794.
City of Ty Ty	City Hall, 141 East Elman Street, Ty Ty, GA 31795.
Tift County Unincorporated Areas	Tift County Office, 255 North Tift Avenue, Building D, Tifton, GA 31794.
Bledsoe County, Tennessee and Incorporated Areas Project: 20–04–0050S Preliminary Date: June 28, 2023	
Unincorporated Areas of Bledsoe County	Bledsoe County Courthouse, 3150 Main Street, Suite 100, Pikeville, TN 37367.
Bradley County, Tennessee and Incorporated Areas Project: 20–04–0050S Preliminary Date: June 28, 2023	
City of Cleveland	Development and Engineering Services Department, 185 2nd Street Northeast, Cleveland, TN 37311.
Unincorporated Areas of Bradley County	Bradley County Courthouse Annex Basement, 155 Broad Street Northwest, Cleveland, TN 37311.
Hamilton County, Tennessee and Incorporated Areas Project: 20–04–0050S—Preliminary Date: June 28, 2023	
City of Chattanooga	Zoning Office, 1250 Market Street, Suite 1000, Chattanooga, TN 37402.
City of Collegedale	City Hall, 4910 Swinyar Drive, Collegedale, TN 37315.
City of East Ridge	City Hall, 1517 Tombras Avenue, East Ridge, TN 37412.
City of Lakesite	City Hall, 9201 Rocky Point Road, Lakesite, TN 37379.
City of Red Bank	City Hall, 3105 Dayton Boulevard, Red Bank, TN 37415.
City of Soddy-Daisy	City Hall, 9835 Dayton Pike, Soddy-Daisy, TN 37379.

Community	Community map repository address
Town of Lookout Mountain	Town Hall, 710 Scenic Highway, Lookout Mountain, TN 37350.
Town of Signal Mountain	Town Hall, 1111 Ridgeway Avenue, Signal Mountain, TN 37377.
Unincorporated Areas of Hamilton County	Hamilton County Engineering Department, 4005 Cromwell Road, Chattanooga, TN 37421.
Marion County, Tennessee and Incorporated Areas Project: 20–04–0050S Preliminary Date: June 28, 2023	
Town of Jasper	City Hall, 4460 Main Street, Jasper, TN 37347.
Town of New Hope	New Hope Town Hall, 2610 Highway 156, South Pittsburg, TN 37380.
Unincorporated Areas of Marion County	Marion County Annex Building, 24 Courthouse Square, Jasper, TN 37347.
McMinn County, Tennessee and Incorporated Areas Project: 20–04–0050S—Preliminary Date: June 28, 2023	
Unincorporated Areas of McMinn County	McMinn County Emergency Operations Center, 1107 South Congress Parkway, Athens, TN 37303.
Meigs County, Tennessee and Incorporated Areas Project: 20–04–0050S Preliminary Date: June 28, 2023	
Town of Decatur	Town Hall, 116 North Main Street, Decatur, TN 37322.
Unincorporated Areas of Meigs County	Meigs County Courthouse, 17214 State Highway 58 North, Decatur, TN 37322.
Rhea County, Tennessee and Incorporated Areas Project: 20–04–0050S Preliminary Date: June 28, 2023	
City of Dayton	City Hall, 399 First Avenue, Dayton, TN 37321.
City of Graysville	City Hall, 136 Harrison Avenue, Graysville, TN 37338.
Unincorporated Areas of Rhea County	Rhea County Courthouse, 375 Church Street, Dayton, TN 37321.
Roane County, Tennessee and Incorporated Areas Project: 20–04–0050S Preliminary Date: June 28, 2023	
Unincorporated Areas of Roane County	Roane County Building Codes and Zoning, 308 North 3rd Street, Kingston, TN 37763.
Sequatchie County, Tennessee and Incorporated Areas Project: 20–04–0050S Preliminary Date: June 28, 2023	
Unincorporated Areas of Sequatchie County	Sequatchie County Clerk's Office, 15 Cherry Street, Dunlap, TN 37327.

[FR Doc. 2024–06780 Filed 3–29–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0014]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Notice of Fiscal Year (FY) 2025 Arrangement

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency announces the Fiscal Year 2025 Financial Assistance/Subsidy Arrangement for private property insurers interested in participating in the National Flood Insurance Program's Write Your Own Program.

DATES: Interested insurers must submit intent to subscribe or re-subscribe to the Arrangement by July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Karolyn Kiss, Federal Insurance Directorate (FID), Resilience FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 646–3140 (phone); or *karolyn.kiss@fema.dhs.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Background

The National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*) authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase flood insurance. *See* 42 U.S.C. 4011(a). Under the NFIA, FEMA may use insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations as fiscal agents of the United States to help it carry out the NFIP. *See* 42 U.S.C. 4071. To this end, FEMA may ''enter into any contracts, agreements, or other appropriate arrangements'' with private insurance companies to use their facilities and services in administering the NFIP on such terms and conditions as they agree upon. *See* 42 U.S.C. 4081(a).

Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as Write Your Own (WYO) companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the Standard Flood Insurance Policy (SFIP). Each Arrangement entered into by a WYO company must be in the form and substance of the standard Arrangement, a copy of which is published in the

Federal Register annually, at least 6 months prior to becoming effective. *See* 44 CFR 62.23(a). To learn more about FEMA's WYO Program, please visit *https://nfipservices.floodsmart.gov/write-your-own-program.*

II. Notice of Availability

Insurers interested in participating in the WYO Program for Fiscal Year 2025 must contact Karolyn Kiss at *karolyn.kiss@fema.dhs.gov* by July 1, 2024.

Prior participation in the WYO Program does not guarantee FEMA will approve continued participation. FEMA will evaluate requests to participate in light of publicly available information, industry performance data, and other criteria listed in 44 CFR 62.24 and the FY 2025 Arrangement, copied below. FEMA encourages private insurance companies to supplement this information with customer satisfaction surveys, industry awards or recognition, or other objective performance data. In addition, private insurance companies should work with their vendors and other service providers involved in servicing and delivering their insurance lines to ensure FEMA receives the information necessary to effectively evaluate the criteria set forth in its regulations.

FEMA will send a copy of the offer for the FY 2025 Arrangement, together with related materials and submission instructions, to all private insurance companies successfully evaluated by the NFIP. If FEMA, after conducting its evaluation, chooses not to renew a Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of the FY 2024 Arrangement for a period required for orderly transfer or cessation of the business and settlement of accounts, not to exceed 18 months. *See* FY 2024 Arrangement, Article II.D. All evaluations, whether successful or unsuccessful, will inform both an overall assessment of the WYO Program and any potential changes FEMA may consider regarding the Arrangement in future fiscal years.

Any private insurance company with questions may contact FEMA at: Karolyn Kiss, Federal Insurance Directorate, Resilience, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 646–3140 (phone); or *karolyn.kiss@fema.dhs.gov* (email).

III. Fiscal Year 2025 Arrangement

Pursuant to 44 CFR 62.23(a), FEMA must publish the Arrangement at least six months prior to the Arrangement becoming effective. The FY 2025 Arrangement provided below is substantially similar to the previous year's Arrangement, but includes the following changes:

1. In Article I.A, FEMA is clarifying that the Arrangement is between FEMA and the Company.

2. In Article II.B, FEMA is removing ''or not re-subscribe,'' because it is addressed in Article II.D, as revised.

3. In Article II.D, FEMA is adding a title and redesignating the whole Article in subparagraphs II.D.1 through II.D.8 for clarity.

4. In newly-designated Article II.D.1, FEMA is removing ''in addition to the requirements of Article II.B, in order to,'' because the time requirements appeared to conflict with the requirements to notify. FEMA resolved the conflicting timelines by clarifying that the Company must notify FEMA of their intent to not resubscribe to the WYO Program within thirty (30) calendar days from their decision, ''but no later than ninety (90) calendar days from the publication in the **Federal Register**'' for the next fiscal year.

5. In newly-designated Article II.D.2, FEMA is adding this subparagraph to capture the situation where a Company elects to no longer continue selling or renewing NFIP policies in a particular state, territory, area or subdivision, while remaining in the WYO Program.

6. In newly-designated Article II.D.3, FEMA is adding the words ''in whole or in part'' regarding the transfer of activities to capture the situation when the Company decides to stop selling or renewing in a particular community. FEMA also increased the period that FEMA may, at its option, require for orderly transfer and settlement of accounts from eighteen (18) months to forty-eight (48) months.

7. FEMA is adding two (2) additional subparagraphs in Article II.D (II.D.7 and II.D.8), reiterating that FEMA will not reimburse for costs associated with the transfer of activities and that the Company will hold FEMA harmless for the Company's failure to timely transfer data and information.

8. For clarity and alignment with subparagraph II.E.2, in Article II.E, FEMA is removing ''under'' and ''in its entirety'' in subparagraph II.E.1 and clarifying that FEMA can cancel financial assistance ''and'' this Arrangement for any of the reasons stated therein. FEMA is also updating citations to subparagraphs II.E.2 and II.E.3 in the Arrangement to align with subparagraph redesignations.

9. In Article II.F, FEMA is moving the first three (3) sentences relating to receivership or run-off status and redesignating them in a new Article II.G, as revised, without material change to the remaining provisions relating to the Company's financial health notice requirements. Only minor edits are made to reflect the fact that some states do not have a ''State Department of Insurance,'' by inserting more general terms and providing some examples.

10. In newly-designated Article II.G, FEMA is removing repetitive language by citing to the language in Article II.F.2 (the Company receives an order or directive making it unable to carry out its obligations under this Arrangement by the insurance industry regulatory body), and adding a new requirement in newly-added subparagraphs II.G.2. In II.G.2, FEMA is requiring that if a Company is subject to II.F.2, the Company must file a motion to stay the proceedings on any and all pending litigation.

11. FEMA is redesignating the remaining two (2) subparagraphs in Article II as II.H. and II.I.

12. In Article III.A.5.f, FEMA is adding a new requirement to the Catastrophic Claims Handling Plan explaining the Company's ability to maintain sufficient adjuster and examiner resources during a catastrophic event.

13. In Article III.A.5.h., FEMA is adding ''and required procedures'' and ''in its possession and control or in the possession and control of its vendors or contractors'' to obtain additional information from the Company on its Privacy Protection Plan standards and process for using and maintaining personally identifiable information.

14. In Article III, FEMA is adding a new subparagraph III.D. requiring a monthly premium payment option for policyholders should FEMA implement such an option during the Arrangement term. FEMA is redesignating the remaining subparagraphs as III. E. through M and adding a new subparagraph III.N.

15. In the new Article III.N, FEMA is adding an additional provision on ''Company's Service Providers'' to ensure the Company conducts appropriate oversight of its vendors, agents, independent adjusters and contractors.

16. In Article IV.C.3, FEMA is adding a citation for special allocated loss adjustment expenses.

17. In Article IV.D.2, FEMA is removing ''litigation'' and inserting ''awards, judgments for damages or settlements'' because litigation expenses are paid as special allocated loss adjustment expenses.

18. FEMA is redesignating Article IV.D.3 as Article IV.E under a new title, ''Litigation Oversight and Reimbursable Expenses.''

19. In newly-redesignated Article IV.E.2, FEMA is deleting ''the Company should utilize its customary business practices for its defense of property and casualty litigation, including billing rates and standards'' and is adding ''the Company must consult with FEMA's WYO Oversight Team'' to assist FEMA in better overseeing WYO NFIP litigation expenses.

20. In newly-redesignated Article IV.E.3, FEMA reorganized existing subparagraphs from Article IV.D.3 and added language to clarify when and how FEMA will reimburse the Company for awards, judgments for damages and any costs to defend litigation.

21. In Article VI.C, FEMA is increasing the term for final settlement of accounts from eighteen (18) months to forty-eight (48) months to enable additional time for orderly settlement of accounts and to accommodate similar changes in Art. II.D.3. Additionally, the language ''subject to audit'' is moved to clarify the need of an audit of the final settlement and all of the Company's obligations it encompasses.

22. In Article XII.A., FEMA is deleting the subtitle ''Audits'' and adding ''and to enable FEMA to carry out the NFIP'' to clarify that FEMA may need to access these documents for reasons other than audits.

The Fiscal Year 2025 Arrangement reads as follows:

Financial Assistance/Subsidy Arrangement

Article I. General Provisions

A. Parties. The parties to the Financial Assistance/Subsidy Arrangement are the Federal Emergency Management Agency (FEMA) and the Company. This Arrangement is solely between FEMA and the Company, and in no instance shall any of the Company's service providers (as defined at III.N) have any rights under this Arrangement.

B. Purpose. The purpose of this Financial Assistance/Subsidy Arrangement is to authorize the Company to sell and service flood insurance policies made available through the National Flood Insurance Program (NFIP) and adjust and pay claims arising under such policies as fiscal agents of the Federal Government.

C. Authority. This Financial Assistance/Subsidy Arrangement is authorized under the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*), and in particular, section 1345(a) of the NFIA (42 U.S.C. 4081(a)), as implemented by 44 CFR 62.23 and 62.24.

Article II. Commencement and Termination

A. The effective period of this Arrangement begins on October 1, 2024, and terminates no earlier than September 30, 2025, subject to extension pursuant to Articles II.D and II.I. FEMA may provide financial assistance only for policy applications, renewals, and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting, and eligibility rules.

B. Pursuant to 44 CFR 62.23(a), FEMA will publish the Arrangement and the terms for subscription or re-subscription for Fiscal Year 2026 in the **Federal Register** no later than April 1, 2025. Within ninety (90) calendar days of such publication, the Company must notify FEMA of its intent to re-subscribe to the WYO Program for the following term.

C. Requesting Participation in WYO Program. Insurers interested in participating in the WYO Program, that have never participated or are returning to the Program after a period of non-participation, must submit a written request to participate.

1. Participation is then contingent on submission of both:

a. A completed application package, the requirements and contents of which FEMA will outline in its written response to the request to participate.

b. A completed operations plan, whose requirements and contents are outlined at Article III.A.5 of this Arrangement.

2. Insurers who are already participating in the program must submit their operations plan within ninety (90) calendar days as outlined in Article III.A.5 of this Arrangement.

D. Uninterrupted Service to Policyholders and Transfer of Data and Records.

1. To ensure uninterrupted service to policyholders, the Company must notify FEMA within thirty (30) calendar days from when the Company elects not to re-subscribe to the WYO Program during the term of this Arrangement, but no later than ninety (90) calendar days from the publication in the **Federal Register** of the Fiscal Year 2026 Arrangement.

2. The Company must notify FEMA as soon as possible, but no later than thirty (30) calendar days from when the Company elects to no longer sell or renew NFIP policies in a community as defined in 44 CFR 59.1.

3. If so notified under Article II.D.1 or II.D.2, or if FEMA chooses not to renew the Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of this Arrangement for the period required for orderly transfer or cessation of business and settlement of accounts, not to exceed forty-eight (48) months after the end of this Arrangement (September 30, 2025), and may either require transfer of activities, in whole or in part, to FEMA under Article II.D.4 or allow transfer of activities, in whole or in part, to another WYO company under Article II.D.6.

4. FEMA may require the Company to transfer all activities under this Arrangement to FEMA. Within thirty (30) calendar days of FEMA's election of this option, the Company must deliver to FEMA the following:

a. A plan for the orderly transfer to FEMA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance.

b. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FEMA, in a standard format and medium.

c. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company must provide FEMA with a report showing, on a policy basis, any amounts due from or payable to policyholders, agents, brokers, and others as of the transition date.

d. All funds in its possession with respect to any policies transferred to FEMA for administration and the unearned expenses retained by the Company.

e. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.

5. Within ninety (90) calendar days of FEMA receiving the Company's data and supporting documentation, FEMA will notify the Company of the date that FEMA will complete the transfer.

6. FEMA may allow the Company to transfer all activities under this Arrangement to one or more other WYO companies. Prior to commencing such transfer, the Company must submit, and FEMA must approve, a formal request. Such request must include the following:

a. An assurance of uninterrupted service to policyholders.

b. A detailed transfer plan providing for either: (1) the renewal of the Company's NFIP policies by one or

more other WYO companies; or (2) the transfer of the Company's NFIP policies to one or more other WYO companies.

c. A description of who the responsible party will be for liabilities relating to losses incurred by the Company in this or preceding Arrangement years.

d. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.

7. FEMA will not reimburse the Company for costs associated with the transfer of activities under this Arrangement to FEMA or another WYO Company.

8. Failure to timely transfer data. The Company agrees to hold FEMA harmless for all costs, liabilities, and expenses, including litigation expenses, incurred due to the Company's failure to timely transfer the data and information requested by FEMA or another WYO Company.

E. Cancellation by FEMA.

1. FEMA may cancel financial assistance and this Arrangement upon thirty (30) calendar days written notice to the Company stating one or more of the following reasons for such cancellation:

a. Fraud or misrepresentation by the Company subsequent to the inception of the Arrangement.

b. Nonpayment to FEMA of any amount due.

c. Material failure to comply with the requirements of this Arrangement or with the written standards, procedures, or guidance issued by FEMA relating to the NFIP and applicable to the Company.

d. Failure to maintain compliance with WYO company participation criteria at 44 CFR 62.24.

e. Any other cause so serious or compelling a nature that affects the Company's present responsibility.

2. If FEMA cancels this Arrangement pursuant to Article II.E.1, FEMA may require the transfer of administrative responsibilities and the transfer of data and records as provided in Article II.D.4 and Article II.D.7–8. If transfer is required, the Company must remit to FEMA the unearned expenses retained by the Company. In such event, FEMA will assume all obligations and liabilities owed to policyholders under such policies, arising before and after the date of transfer.

3. As an alternative to the transfer of the policies to FEMA pursuant to Article II.E.2, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided in Article II.D.6 and Article II.D.7–8.

F. The Company shall notify FEMA, immediately, if:

1. An independent financial rating company downgrades its financial strength during its period of performance under this Arrangement; or

2. It receives an order or directive making it unable to carry out its obligations under this Arrangement by the insurance industry regulatory body of any jurisdiction (*e.g.,* Department of Insurance or Commissioner or Superintendent of Insurance) or court of law to which the Company is subject, including but not limited to being placed in receivership or run-off status by a State insurance regulatory body.

G. In the event that the Company is unable or otherwise fails to carry out its obligations under this Arrangement for reasons set out in Article II.F.2:

1. The Company agrees to transfer, and FEMA will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event FEMA will assume all obligations and liabilities within the scope of the Arrangement owed to policyholders arising before and after the date of transfer, and the Company will immediately transfer to FEMA all needed records and data, pursuant to Article II.D.4 and Article II.D.7–8, and all funds in its possession with respect to all such policies transferred and the unearned expenses retained by the Company. As an alternative to the transfer of the policies to FEMA, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities under this Arrangement by another WYO company as provided by Article II.D.6 and Article II.D.7–8.

2. If there is ongoing litigation, the Company must file a motion to stay the proceedings on any and all pending litigation within the scope of the Arrangement, and FEMA or, if approved by FEMA, another WYO company, will assume full litigation responsibility.

H. In the event the Act is amended, repealed, expires, or if FEMA is otherwise without authority to continue the Program, FEMA may cancel financial assistance under this Arrangement for any new or renewal business, but the Arrangement will continue for policies in force that shall be allowed to run their term under the Arrangement.

I. If FEMA does not publish the Fiscal Year 2026 Arrangement in the **Federal Register** on or before April 1, 2025, then FEMA may require the continued performance of all or selected elements of this Arrangement through December 31, 2026, but such extension may not exceed the expiration of the six (6) month period following publication of the Fiscal Year 2026 Arrangement in the **Federal Register**.

Article III. Undertakings of the Company

A. Responsibilities of the Company.

1. Policy Issuance and Maintenance. The Company must meet all requirements of the Financial Control Plan and any guidance issued by FEMA. The Company is responsible for the following:

a. Compliance with Rating Procedures.

b. Eligibility Determinations.

c. Policy Issuances.

d. Policy Endorsements.

e. Policy Cancellations.

f. Policy Correspondence.

g. Payment of Agents' Commissions.

h. Fund management, including the receipt, recording, disbursement, and timely deposit of NFIP funds.

2. The Company must provide a live customer service agent that (1) is accessible to all policyholders via telephone during business days, and (2) can resolve commonplace customer service issues.

3. Claims Processing.

a. In general. The Company must process all claims consistent with the Standard Flood Insurance Policy, Financial Control Plan, Claims Manual, other guidance adopted by FEMA, and as much as possible, with the Company's standard business practices for its non-NFIP policies.

b. Adjuster registration. The Company may not use an independent adjuster to adjust a claim unless the independent adjuster:

i. Holds a valid Flood Control Number issued by FEMA; or

ii. Participates in the Flood Adjuster Capacity Program.

c. Claim reinspections. The Company must cooperate with any claim reinspection by FEMA.

4. Reports. The Company must certify its business under the WYO Program through monthly financial reports in accordance with the requirements of the Pivot Use Procedures. The Company must follow the Financial Control Plan and the WYO Accounting Procedures Manual. FEMA will validate and audit, in detail, these data and compare the results against Company reports.

5. Operations Plan. Within ninety (90) calendar days of the commencement of this Arrangement, the Company must submit a written Operations Plan to FEMA describing its efforts to perform under this Arrangement. The plan must include the following:

a. Private Flood Insurance Separation Plan. If applicable, a description of the Company's policies, procedures, and practices separating their NFIP flood insurance lines of business from their non-NFIP flood insurance lines of business, including its implementation of Article III.F.

b. Marketing Plan. A marketing plan describing the Company's forecasted growth, efforts to achieve that growth, and ability to comply with any marketing guidelines provided by FEMA.

c. Policy Retention Plan. A retention plan describing the Company's efforts to retain and renew policies and methods of communicating with policyholders on renewals.

d. Customer Service Plan. A description of overall customer service practices, including ongoing and planned improvement efforts.

e. Distribution Plan. A description of the Company's NFIP flood insurance distribution network, including anticipated numbers of agents, efforts to train those agents, and an average rate of commissions paid to producers by state.

f. Catastrophic Claims Handling Plan. A catastrophic claims handling plan describing how the Company will respond and maintain service standards in catastrophic flood events, including:

i. Deploying mobile or temporary claims centers to provide immediate policyholder assistance, including submission of notice of loss and claim status information.

ii. Preparing people, processes, and tools for claims processing in remote work scenarios.

iii. Preparing communications in advance for readiness throughout the year including a suite of printed and digital materials (*e.g.,* advertisements, educational materials, social media messaging, website blogs and announcements) that provide key messaging to stakeholders, including policyholders, agents, and the public following a catastrophic flood event.

iv. Identifying the core areas of information technology that need to be scaled pre-event or are scalable post-event.

v. Ensuring the availability of sufficient adjusters and examiners to handle sudden surge in claims filings and handling.

g. Business Continuity Plan. A business continuity plan identifying threats and risks facing the Company's NFIP-related operations and how the Company will maintain operations in the event of a disaster affecting its operational capabilities.

h. Privacy Protection Plan. A privacy protection plan that describes the Company's standards and required procedures for using and maintaining personally identifiable information, in its possession and control or in the possession or control of its vendors or contractors.

i. System Security Plan. A system security plan that describes system boundaries, system environments of operation, how security requirements are implemented, and the relationships with or connections to other systems, including plans of action that describe how unimplemented security requirements will be met and how any planned mitigations will be implemented, prepared in accordance with either:

i. National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 ''Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations'', Revision 2, *https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final;* or

ii. Another comparable standard deemed acceptable by FEMA.

B. Time Standards. WYO companies must meet the time standards provided below. Time will be measured from the date of receipt through the date the task is completed. In addition to the standards set forth below, all functions performed by the Company must be in accordance with the highest reasonably attainable quality standards generally used in the insurance and data processing field. Applicable time standards are:

1. Application Processing—fifteen (15) business days (Note: if the policy cannot be sent due to insufficient or erroneous information or insufficient funds, the Company must send a request for correction or added moneys within ten (10) business days).

2. Renewal processing—seven (7) business days.

3. Endorsement processing—fifteen (15) business days.

4. Cancellation processing—fifteen (15) business days.

5. File examination—seven (7) business days from the day the Company receives the final report.

6. Claims draft processing—seven (7) business days from completion of file examination.

7. Claims adjustment—forty-five (45) calendar days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

8. Upload transactions to Pivot—one (1) business day.

C. Policy Issuance.

1. The flood insurance subject to this Arrangement must be only that insurance written by the Company in its own name pursuant to the Act.

2. The Company must issue policies under the regulations prescribed by FEMA, in accordance with the Act, on a form approved by FEMA.

3. The Company must issue all policies in consideration of such premiums and upon such terms and conditions and in such states or areas or subdivisions thereof as may be designated by FEMA and only where the Company is licensed by State law to engage in the property insurance business.

D. Installment Plans for Premium Payments. During the term of the Arrangement, FEMA may require the Company to offer a monthly premium installment payment option.

E. Lapse of Authority or Appropriation. FEMA may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the NFIP lapses.

F. Separation of Finances and Other Lines of Flood Insurance.

1. The Company must separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article IV. The Company must remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

2. Other Undertakings of the Company.

a. Clear communication. If the Company also offers insurance policies covering the peril of flood outside of the NFIP in any geographic area in which Program authorizes the purchase of flood insurance, the Company must ensure that all public communications (whether written, recorded, electronic, or other) regarding non-NFIP insurance lines would not lead a reasonable person to believe that the NFIP, FEMA, or the Federal Government in any way endorses, sponsors, oversees, regulates, or otherwise has any connection with the non-NFIP insurance line. The Company may assure compliance with this requirement by prominently including in such communications the following statement: ''This insurance product is not affiliated with the National Flood Insurance Program.''

b. Data protection. The Company may not use non-public data, information, or

resources obtained in course of executing this Arrangement to further or support any activities outside the scope of this Arrangement.

G. Claims. The Company must investigate, adjust, settle, and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company bind FEMA, subject to appeal.

H. Compliance with Agency Standards and Guidelines.

1. The Company must comply with the Act, regulations, written standards, procedures, and guidance issued by FEMA relating to the NFIP and applicable to the Company, including, but not limited to the following:

a. WYO Program Financial Control Plan.

b. Pivot Use Procedures.

c. NFIP Flood Insurance Manual.

d. NFIP Claims Manual.

e. NFIP Litigation Manual.

f. WYO Accounting Procedures Manual.

g. WYO Company Bulletins.

2. The Company must market flood insurance policies in a manner consistent with marketing guidelines established by FEMA.

3. FEMA may require the Company to collect customer service information to monitor and improve their program delivery.

4. The Company must notify its agents of the requirement to comply with State regulations regarding flood insurance agent education, notify agents of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs.

I. Compliance with Appeals Process.

1. In general. FEMA will notify the Company when a policyholder files an appeal. After notification, the Company must provide FEMA the following information:

a. All records created or maintained pursuant to this Arrangement requested by FEMA.

b. A comprehensive claim file synopsis, redacted of personally identifiable information, that includes a summary of the appeal issues, the Company's position on each issue, and any additional relevant information. If, in the process of writing the synopsis, the Company determines that it can address the issue raised by the policyholder on appeal without further direction, it must notify FEMA. The Company will then work directly with the policyholder to achieve resolution and update FEMA upon completion. The Company may have a claims examiner review the file who is independent from the original decision and who possesses the authority to overturn the original decision if the facts support it.

2. Cooperation. The Company must cooperate with FEMA throughout the appeal process until final resolution. This includes adhering to any written appeals guidance issued by FEMA.

3. Resolution of Appeals. FEMA will close an appeal when:

a. FEMA upholds the denial by the Company.

b. FEMA overturns the denial by the Company and all necessary actions that follow are completed.

c. The Company independently resolves the issue raised by the policyholder without further direction.

d. The policyholder voluntarily withdraws the appeal.

e. The policyholder files litigation.

4. Processing of Additional Payments from Appeal. The Company must follow established NFIP adjusting practices and claim handling procedures for appeals that result in additional payment to a policyholder when FEMA does not explicitly direct such payment during the review of the appeal.

5. Time Standards.

a. Provide FEMA with requested files pursuant to Article III.I.1.a—ten (10) business days after request.

b. Provide FEMA with comprehensive claim file synopsis pursuant to Article III.I.1.b—ten (10) business days after request.

c. Responding to inquiries from FEMA regarding an appeal—ten (10) business days after inquiry.

d. Inform FEMA of any litigation filed by a policyholder with a current appeal—ten (10) business days of notice.

J. Subrogation.

1. In general. Consistent with Federal law and guidance, the Company must use its customary business practices when pursuing subrogation.

2. Referral to FEMA. Pursuant to 44 CFR 62.23(i)(8), in lieu of the Company pursuing a subrogation claim, WYO companies may refer such claims to FEMA.

3. Notification. No more than ten (10) calendar days after either the Company identifies a possible subrogation claim or FEMA notifies the Company of a possible subrogation claim, the Company must notify FEMA of its intent to pursue the claim or refer the claim to FEMA.

4. Cooperation. Pursuant to 44 CFR 62.23(i)(11), the Company must extend reasonable cooperation to FEMA's Office of the Chief Counsel on matters related to subrogation.

K. Access to Records. The Company must furnish to FEMA such summaries and analysis of information including claim file information and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the Act, in such form as FEMA, in cooperation with the Company, will prescribe.

L. System for Award Management (SAM). The Company must be registered in the System for Award Management. Such registration must have an active status during the period of performance under this Arrangement. The Company must ensure that its SAM registration is accurate and up to date.

M. Cybersecurity.

1. In general. Unless the Company uses a compliance alternative pursuant to Article III.M.2, the Company must implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 ''Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations'', Revision 2 (*https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*) for any system that processes, stores, or transmits information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, this Arrangement, or other applicable requirements, including information protected pursuant to Article XII.C and personally identifiable information of NFIP applicants and policyholders. Such implementation must be validated by a third-party assessment organization.

2. Compliance alternatives. In lieu of compliance with Article III.M.1, the Company may either:

a. Provide FEMA with documentation that the Company is securing the systems subject to the requirements of Article III.M.1 with either:

i. ISO/IEC 27001, *https://www.iso.org/isoiec-27001-information-security.html;*

ii. NIST Cybersecurity Framework, *https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final;*

iii. Cybersecurity Maturity Model Certification (CMMC 2.0), *https://dodcio.defense.gov/CMMC/;*

iv. Service and Organization Controls (SOC) 2, *https://www.aicpa.org/interestareas/frc/assuranceadvisoryservices/sorhome.html;* or

v. Another comparable standard deemed acceptable by FEMA.

b. Provide a plan of action that describes how unimplemented security requirements of NIST SP 800–171, rev. 2, (*https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*) will be met and how any planned mitigations

will be implemented as part of the system security plan required under Article III.A.5.i.

N. Company's Service Providers. The Company is required to ensure all its vendors, independent adjusters and contractors are acting consistently with FEMA's regulations, Arrangement and NFIP guidance.

Article IV. Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company is liable for operating, administrative, and production expenses, including any State premium taxes, dividends, agents' commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as municipal or county premium taxes, surcharges on flood insurance premium, and guaranty fund assessments.

B. Payment for Selling and Servicing Policies.

1. Operating and Administrative Expenses. The Company may withhold, as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating, and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Article IV.C. This amount will equal the sum of the average industry expenses ratios for ''Other Act.'', ''Gen. Exp.'' And ''Taxes'' calculated by aggregating premiums and expense amounts for each of five property coverages using direct premium and expense information to derive weighted average expense ratios. For this purpose, FEMA will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's Aggregates and Averages for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion).

2. Agent Compensation. The Company may retain fifteen (15) percent of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet the commissions or salaries of insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

3. Growth Bonus. FEMA may increase the amount of expense allowance retained by the Company depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article III.H.2. The total growth bonuses paid to companies pursuant to this Arrangement may not exceed two (2) percent of the aggregate net written premium collected by all WYO companies. FEMA will pay the Company the amount of any increase after the end of the Arrangement year.

C. FEMA will reimburse Loss Adjustment Expenses as follows:

1. FEMA will reimburse unallocated loss adjustment expenses to the Company pursuant to a ''ULAE Schedule'' coordinated with the Company and provided by FEMA.

2. FEMA will reimburse allocated loss adjustment expenses to the Company pursuant to a ''Fee Schedule'' coordinated with the Company and provided by FEMA. To ensure the availability of qualified insurance adjusters during catastrophic flood events, FEMA may, in its sole discretion, temporarily authorize the use of an alternative Fee Schedule with increased amounts during the term of this Arrangement for losses incurred during a time frame established by FEMA.

3. FEMA will reimburse special allocated loss expenses under 44 CFR 62.23(i)(9) and subrogation expenses reimbursable under 44 CFR 62.23(i)(8) to the Company in accordance with guidelines issued by FEMA.

D. Loss Payments.

1. The Company must make loss payments for flood insurance policies from federal funds retained in the bank account(s) established under Article III.F.1 and, if such funds are depleted, from Federal funds withdrawn from the National Flood Insurance Fund pursuant to Article V.

2. Loss payments include payments because of awards, judgments for damages or settlements that arise under the scope of this Arrangement, and the Authorities set forth herein. All such loss payments and related expenses must meet the documentation requirements of the Financial Control Plan and of this Arrangement, and the Company must comply with the litigation documentation and notification requirements established by FEMA. Failure to meet these requirements may result in FEMA's decision not to provide reimbursement.

E. Litigation Oversight and Reimbursable Litigation Expenses.

1. Any litigation resulting from, related to, or arising from the Company's compliance with the written standards, procedures, and guidance issued by FEMA arises under the National Flood Insurance Act of 1968 or regulations, and such legal issues raise a Federal question.

2. The Company must conduct and oversee litigation arising out of the Company's participation in the NFIP in accordance with the National Flood Insurance Program Litigation Manual. When a specific issue is not addressed by the National Flood Insurance Program Litigation Manual, the Company must consult with FEMA's WYO Oversight Team.

3. Limitation on Reimbursement and Payment of Litigation Expenses and Payment of Judgment and Award. FEMA will not reimburse the Company, in whole or part, for any award or judgment for damages, and any costs to defend litigation:

a. Involving issues of agent negligence, errors or omissions;

b. Grounded in actions by the Company that are significantly outside the scope of this Arrangement, including, but not limited to, reckless disregard of the Company's duties under the Arrangement, regulations or FEMA's written standards, procedures or guidance relating to the NFIP;

c. Involving the submittal of inaccurate, false or fraudulent requests for litigation expense reimbursement;

d. Where the Company failed to comply with the requirements of the NFIP Litigation Manual;

e. Incurred after the Company became unable or otherwise failed to carry out its obligations under this Arrangement for the reasons contained in Article II.F.2, except that FEMA will reimburse the Company for reasonable costs of filing motions to stay proceedings; or

f. When FEMA and the Company's interests diverge, including positions on litigation strategy and settlement.

F. Refunds. The Company must make premium refunds required by FEMA to applicants and policyholders from Federal flood insurance funds referred to in Article III.F.1, and, if such funds are depleted, from funds derived by withdrawing from the National Flood Insurance Fund pursuant to Article V. The Company may not refund any premium from Federal flood insurance funds to applicants or policyholders in any manner other than as specified by FEMA since flood insurance premiums are funds of the Federal Government.

G. Suspension and Debarment.

1. In general. The Company may not contract with or employ any person who is suspended or debarred from

participating in federal transactions pursuant to 2 CFR part 180 (covering federal nonprocurement transactions) or 48 CFR part 9, subpart 9.4 (covering federal procurement transactions) in relation to this Arrangement.

2. Reimbursement. FEMA will not reimburse the company for any expenses incurred in violation of Article IV.G.1.

3. Compliance. The Company may ensure compliance with Article IV.G.1 by:

a. Checking the System for Awards Management at *sam.gov;*

b. Collecting a certification from that person; or

c. Adding a clause or condition to the transaction with that person.

Article V. Undertakings of the Government

A. FEMA must enable the Company to withdraw funds from the National Flood Insurance Fund daily, if needed, pursuant to prescribed procedures implemented by FEMA. FEMA will increase the amounts of the authorizations as necessary to meet the obligations of the Company under Article IV.C–F. The Company may only request funds when net premium income has been depleted. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable expenses. Request for payment may not ordinarily be drawn more frequently than daily. The Company may withdraw funds from the National Flood Insurance Fund for any of the following reasons:

1. Payment of claims, as described in Article IV.D.

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund, as described in Article IV.F.

3. Allocated and unallocated loss adjustment expenses, as described in Article IV.C.

B. FEMA must provide technical assistance to the Company as follows:

1. NFIP policy and history.

2. Clarification of underwriting, coverage, and claims handling.

3. Other assistance as needed.

C. FEMA must provide the Company with a copy of all formal written appeal decisions conducted in accordance with Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264 and 44 CFR 62.20.

D. Prior to the end of the Arrangement period, FEMA may provide the Company a statistical summary of their performance during the signed Arrangement period. This summary will detail the Company's performance individually, as well as compare the Company's performance to the aggregate performance of all WYO companies and the NFIP Direct Servicing Agent.

Article VI. Cash Management and Accounting

A. FEMA must make available to the Company during the entire term of this Arrangement the ability to withdraw funds from the National Flood Insurance Fund provided for in Article V. The Company may withdraw funds from the National Flood Insurance Fund for reimbursement of its expenses as set forth in Article V. A that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw. In the event that adequate funding is not available to meet current Company obligations for flood policy claim payments issued, FEMA must direct the Company to immediately suspend the issuance of loss payments until such time as adequate funds are available. The Company is not required to pay claims from their own funds in the event of such suspension.

B. The Company must remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by FEMA.

C. In the event the Company elects not to participate in the Program in this or any subsequent fiscal year, or is otherwise unable or not permitted to participate, the Company and FEMA must make a provisional settlement of all amounts due or owing within three (3) months of the expiration or termination of this Arrangement. This settlement must include net premiums collected, funds withdrawn from the National Flood Insurance Fund, and reserves for outstanding claims. The Company and FEMA agree to make a final settlement of accounts for all obligations arising from this Arrangement within forty-eight (48) months, which may be extended for good cause and subject to audit, of its expiration or termination, except for contingent liabilities that must be listed by the Company. At the time of final settlement, the balance, if any, due FEMA or the Company must be remitted by the other immediately and the operating year under this Arrangement must be closed.

D. Upon FEMA's request, the Company must provide FEMA with a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.

E. The Company must comply with the requirements of the False Claims Act (41 U.S.C. 3729–3733), which prohibits submission of false or fraudulent claims for payment to the Federal Government.

Article VII. Arbitration

If any misunderstanding or dispute arises between the Company and FEMA with reference to any factual issue under any provisions of this Arrangement or with respect to FEMA's nonrenewal of the Company's participation, other than as to legal liability under or interpretation of the Standard Flood Insurance Policy, such misunderstanding or dispute may be submitted to arbitration for a determination that will be binding upon approval by FEMA. The Company and FEMA may agree on and appoint an arbitrator who will investigate the subject of the misunderstanding or dispute and make a determination. If the Company and FEMA cannot agree on the appointment of an arbitrator, then two arbitrators will be appointed, one to be chosen by the Company and one by FEMA.

The two arbitrators so chosen, if they are unable to reach an agreement, must select a third arbitrator who must act as umpire, and such umpire's determination will become final only upon approval by FEMA. The Company and FEMA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FEMA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article VIII. Errors and Omissions

A. In the event of negligence by the Company that has not resulted in litigation but has resulted in a claim against the Company, FEMA will not consider reimbursement of the Company for costs incurred due to that negligence unless the Company takes all reasonable actions to rectify the negligence and to mitigate any such costs as soon as possible after discovery of the negligence. The Company may choose not to seek reimbursement from FEMA.

B. If the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment may not be paid by the Company from any portion of the premium and any funds derived from any Federal funds deposited in the bank account described in Article III.F.1. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article IX. Officials Not To Benefit

No Member or Delegate to Congress, or Resident Commissioner, may be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision may not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article X. Offset

At the settlement of accounts, the Company and FEMA have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and FEMA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XI. Equal Opportunity

A. Age Discrimination Act of 1975. The Company must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94–135 (42 U.S.C. 6101 *et seq.*) which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

B. Americans with Disabilities Act. The Company must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Public Law 101–336 (42 U.S.C. 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

C. Civil Rights Act of 1964—Title VI. The Company must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Department of Homeland Security implementing regulations for the Act are found at 6 CFR part 21 and 44 CFR part 7.

D. Civil Rights Act of 1968. The Company must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex as implemented by the U.S. Department of Housing and Urban Development at 24 CFR part 100.

E. Rehabilitation Act of 1973. The Company must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XII. Access to Books and Records

A. FEMA, the Department of Homeland Security, and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, examination, and to enable FEMA to carry out the NFIP shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. FEMA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

B. Nondisclosure by FEMA. FEMA, to the extent permitted by law and regulation, will safeguard and treat information submitted or made available by the Company pursuant to this Arrangement as confidential where the information has been marked ''confidential'' by the Company and the Company customarily keeps such information private or closely-held. To the extent permitted by law and regulation, FEMA will not release such information to the public pursuant to a Freedom of Information Act (FOIA) request, 5 U.S.C. 552, without prior notification to the Company. FEMA may transfer documents provided by the Company to any department or agency within the Executive Branch or to either house of Congress if the information relates to matters within the organization's jurisdiction. FEMA may also release the information submitted pursuant to a judicial order from a court of competent jurisdiction.

C. Nondisclosure by Company.

1. In general. The Company, to the extent permitted by law, must safeguard and treat information submitted or made available by FEMA pursuant to this Arrangement as confidential where the information has been marked or identified as ''confidential'' by FEMA and FEMA customarily keeps such information private or closely-held. The Company may not disclose such confidential information to a third-party without the express written consent of FEMA or as otherwise required by law.

2. Other protections. Article XII.C.1 shall not be construed as to limit the effect of any other requirement on the Company to protect information from disclosure, including a joint defense agreement or under the Privacy Act.

Article XIII. Compliance With Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto are subject to Federal law and regulations.

Article XV. Relationship Between the Parties and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, that is, to ensure that any taxpayer funds are accounted for and appropriately expended. The Company is a fiscal agent of the Federal Government, but is not a general agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any policy issued pursuant hereto, such that the Federal Government is not a proper party to any lawsuit arising out of such policies.

Authority: 42 U.S.C. 4071, 4081; 44 CFR 62.23.

David I. Maurstad,

Assistant Administrator for Federal Insurance Directorate, Resilience, Federal Emergency Management Agency.

[FR Doc. 2024–06805 Filed 3–29–24; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of July 31, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Sonoma County, California and Incorporated Areas Docket No.: FEMA–B–2328	
City of Santa Rosa	Engineering Division, City Hall, 100 Santa Rosa Avenue, Santa Rosa, CA 95404.
Town of Windsor	Civic Center, Building 400, 9291 Old Redwood Highway, Windsor, CA 95492.
Unincorporated Areas of Sonoma County	Sonoma County Permit & Resource Management, 2550 Ventura Avenue, Santa Rosa, CA 95403.
Broward County, Florida and Incorporated Areas Docket No.: FEMA–B–2163	
City of Coconut Creek	Utilities and Engineering Building, 5295 Johnson Road, Coconut Creek, FL 33073.
City of Cooper City	Building Department, 9090 Southwest 50th Place, Cooper City, FL 33328.
City of Dania Beach	City Hall, 100 West Dania Beach Boulevard, Dania Beach, FL 33004.
City of Deerfield Beach	Engineering Department, 200 Goolsby Boulevard, Deerfield Beach, FL 33442.
City of Fort Lauderdale	Department of Sustainable Development, 700 Northwest 19th Avenue, Fort Lauderdale, FL 33311.

Community	Community map repository address
City of Hallandale Beach	Public Works Department, 630 Northwest 2nd Street, Hallandale Beach, FL 33009.
City of Hollywood	Public Utilities Department, 1621 North 14th Avenue, Hollywood, FL 33022.
City of Lauderdale Lakes	Development Services Department, 3521 Northwest 43rd Avenue, Lauderdale Lakes, FL 33319.
City of Lauderhill	Fire Rescue Department, 1980 Northwest 56th Avenue, Lauderhill, FL 33313.
City of Lighthouse Point	Public Works Department, 4730 Northeast 21st Terrace, Lighthouse Point, FL 33064.
City of Margate	Department of Environmental and Engineering Services, 901 Northwest 66th Avenue, Suite A, Margate, FL 33063.
City of Miramar	Building Planning and Zoning, 2200 Civic Center Place, Miramar, FL 33025.
City of Oakland Park	Planning and Zoning Division, 5399 North Dixie Highway, Suite 3, Oakland Park, FL 33334.
City of Pembroke Pines	Engineering Division, 8300 South Palm Drive, Pembroke Pines, FL 33025.
City of Plantation	Engineering Department, 401 Northwest 70th Terrace, Plantation, FL 33317.
City of Pompano Beach	Building Department, 100 West Atlantic Boulevard, 3rd Floor, Pompano Beach, FL 33060.
City of Sunrise	Engineering Department, 10770 West Oakland Park Boulevard, Sunrise, FL 33351.
City of Tamarac	Public Works and Engineering Building Department, 6011 Nob Hill Road, 1st Floor, Tamarac, FL 33321.
City of West Park	City Hall, 1965 South State Road 7, West Park, FL 33023.
City of Weston	Public Works Department, 2599 South Post Road, Weston, FL 33327.
City of Wilton Manors	Community Development Services, 2020 Wilton Drive, 2nd Floor, Wilton Manors, FL 33305.
Seminole Tribe of Florida	Seminole Tribe of Florida Headquarters, 6300 Stirling Road, Hollywood, FL 33024.
Town of Davie	Building and Zoning Division, 8800 Southwest 36th Street, Davie, FL 33328.
Town of Hillsboro Beach	Town Hall, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.
Town of Lauderdale-By-The-Sea	Public Works Department, 4501 North Ocean Drive, Lauderdale-By-The-Sea, FL 33308.
Town of Pembroke Park	Engineering Department, 3150 Southwest 52nd Avenue, Pembroke Park, FL 33023.
Town of Southwest Ranches	Public Works Department, 13400 Griffin Road, Southwest Ranches, FL 33330.
Unincorporated Areas of Broward County	Broward County Government Center West, 1 North University Drive, Plantation, FL 33324.
Village of Lazy Lake	Village Hall, 2250 Lazy Lane, Lazy Lake, FL 33305.
Village of Sea Ranch Lakes	Village Hall, 1 Gatehouse Road, Sea Ranch Lakes, FL 33308.
Daviess County, Kentucky and Incorporated Areas Docket Nos.: FEMA–B–2289 and FEMA–B–2325	
City of Owensboro	Planning Commission Building, 200 East 3rd Street, Suite 201, Owensboro, KY 42303.
Unincorporated Areas of Daviess County	Daviess County Courthouse, 212 Saint Ann Street, Room 202, Owensboro, KY 42303.
East Feliciana Parish, Louisiana and Incorporated Areas Docket No.: FEMA–B–2275	
Town of Jackson	Town Hall, 1610 Charter Street, Jackson, LA 70748.
Unincorporated Areas of East Feliciana Parish	East Feliciana Parish Police Jury Office, 12064 Marston Street, Clinton, LA 70722.
West Feliciana Parish, Louisiana and Incorporated Areas Docket No.: FEMA–B–2275	
Town of St. Francisville	Town Hall, 11936 Ferdinand Street, St. Francisville, LA 70775.
Unincorporated Ares of West Feliciana Parish	West Feliciana Parish Governmental Building, 5934 Commerce Street, St. Francisville, LA 70775.
Sullivan County, Tennessee and Incorporated Areas Docket No.: FEMA–B–2310	
City of Bristol	City Hall Annex, 104 8th Street, Bristol, TN 37620.
City of Kingsport	City Hall, 415 Broad Street, Kingsport, TN 37660.

Community	Community map repository address
Unincorporated Areas of Sullivan County	Sullivan County Planning and Zoning, 3425 Highway 126, Suite 101, Blountville, TN 37617.
Bay County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2331	
Charter Township of Bangor	Bangor Charter Township Hall, 180 State Park Drive, Bay City, MI 48706.
Charter Township of Hampton	Hampton Hall, 801 West Center Road, Essexville, MI 48732.
Charter Township of Monitor	Monitor Township Hall, 2483 Midland Road, Bay City, MI 48706.
Charter Township of Portsmouth	Portsmouth Township Hall, 1711 West Cass Avenue Road, Bay City, MI 48708.
City of Bay City	City Hall, 301 Washington Avenue, Bay City, MI 48708.
City of Essexville	City Hall, 1107 Woodside Avenue, Essexville, MI 48732.
City of Pinconning	City Hall, 208 Manitou Street, Pinconning, MI 48650.
Township of Frankenlust	Frankenlust Township Hall, 2401 Delta Road, Bay City, MI 48706.
Township of Fraser	Fraser Township Hall, 1474 North Mackinaw, Linwood, MI 48634.
Township of Kawkawlin	Township Hall, 1836 East Parish Road, Kawkawlin, MI 48631.
Township of Merritt	Merritt Township Community Hall, 48 East Munger Road, Munger, MI 48747.
Township of Pinconning	Township Hall, 1751 East Cody Estey Road, Pinconning, MI 48650.
Kalamazoo County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2192 and FEMA–B–2249	
Charter Township of Comstock	Comstock Township Offices, 6138 King Highway, Kalamazoo, MI 49048.
Charter Township of Cooper	Cooper Township Offices, 1590 D Avenue West, Kalamazoo, MI 49009.
Charter Township of Kalamazoo	Township Hall, 1720 Riverview Drive, Kalamazoo, MI 49004.
Charter Township of Texas	Texas Township Hall, 7110 West Q Avenue, Kalamazoo, MI 49009.
City of Galesburg	City Hall, 200 East Michigan Avenue, Galesburg, MI 49053.
City of Kalamazoo	City Hall, 241 West South Street, Kalamazoo, MI 49007.
City of Parchment	City Hall, 650 South Riverview Drive, Parchment, MI 49004.
City of Portage	City Hall, 7900 South Westnedge Avenue, Portage, MI 49002.
Township of Brady	Brady Town Hall, 13123 South 24th Street, Vicksburg, MI 49097.
Township of Charleston	Charleston Township Hall, 1499 South 38th Street, Galesburg, MI 49053.
Township of Climax	Township Hall, 110 North Main Street, Climax, MI 49034.
Township of Prairie Ronde	Prairie Ronde Township Hall, 14050 South 6th Street, Schoolcraft, MI 49087.
Township of Richland	Township Offices, 7401 North 32nd Street, Richland, MI 49083.
Township of Ross	Ross Township Offices, 12086 East M–89, Richland, MI 49083.
Township of Schoolcraft	Schoolcraft Township Hall, 50 VW Avenue East, Vicksburg, MI 49097.
Village of Augusta	Village Hall, 109 West Clinton Street, Augusta, MI 49012.
Village of Vicksburg	Village Hall, 126 North Kalamazoo Avenue, Vicksburg, MI 49097.
Menominee County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2342	
City of Menominee	City Hall, 2511 10th Street, Menominee, MI 49858.
Township of Cedarville	Cedarville Township Hall, N8235 Old Mill Lane Number 20.75, Cedar River, MI 49887.
Township of Ingallston	Ingallston Township Hall, W3790 Town Hall Lane Number 13.5, Wallace, MI 49893.
Township of Menominee	Township Hall, N2283 O–1 Drive, Menominee, MI 49858.
Morrison County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2323	
City of Bowlus	City Hall, 212 Main Street, Bowlus, MN 56314.
City of Buckman	Buckman City Hall, 27031 Park Street, Pierz, MN 56364.
City of Elmdale	Elmdale City Community Center, 8197 State Highway 238, Bowlus, MN 56314.
City of Genola	Genola City Office, 13883 Highway 25, Pierz, MN 56364.
City of Harding	Harding Community Center, 24599 Quest Road, Pierz, MN 56364.
City of Lastrup	City Hall, 19201 285th Avenue, Lastrup, MN 56344.
City of Little Falls	City Hall, 100 Northeast 7th Avenue, Little Falls, MN 56345.
City of Motley	City Hall, 316 Highway 10 South, Motley, MN 56466.
City of Pierz	City Hall, 101 Main Street South, Pierz, MN 56364.
City of Randall	City Hall, 525 Pacific Avenue, Randall, MN 56475.
City of Royalton	City Hall, 12 North Birch Street, Royalton, MN 56373.
City of Sobieski	Sobieski City Clerk's Office, 11761 92nd Avenue, Little Falls, MN 56345.

Community	Community map repository address
City of Swanville	City Hall, 305 DeGraff Avenue, Swanville, MN 56382.
City of Upsala	City Hall, 320 Walnut Avenue, Upsala, MN 56384.
Unincorporated Areas of Morrison County	Morrison County Government Center, 2131st Avenue Southeast, Little Falls, MN 56345.
Monroe County, New York (All Jurisdictions) Docket No.: FEMA–B–2301	
City of Rochester	City Hall, 30 Church Street, Rochester, NY 14614.
Town of Brighton	Brighton Town Hall, Public Works Department, 2300 Elmwood Avenue, Rochester, NY 14618.
Town of Greece	Town Hall, 1 Vince Tofany Boulevard, Greece, NY 14612.
Town of Hamlin	Town Hall, 1658 Lake Road, Hamlin, NY 14464.
Town of Irondequoit	Irondequoit Town Hall, 1280 Titus Avenue, Rochester, NY 14617.
Town of Parma	Parma Town Hall, 1300 Hilton Parma Corners Road, Hilton, NY 14468.
Town of Penfield	Town Hall, 3100 Atlantic Avenue, Penfield, NY 14526.
Town of Webster	Town Hall, 1000 Ridge Road, Webster, NY 14580.
Licking County, Ohio and Incorporated Areas Docket No.: FEMA–B–2339	
City of Pataskala	City Hall, 621 West Broad Street, Pataskala, OH 43062.
City of Reynoldsburg	Municipal Building, 7232 East Main Street, Reynoldsburg, OH 43068.
Unincorporated Areas of Licking County	The Donald D. Hill County Administration Building, 20 South Second Street, Newark, OH 43055.
Columbia County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–2102 and FEMA–B–2293	
Borough of Benton	Borough Office, 420 Airport Road, Benton, PA 17814.
Borough of Berwick	City Hall, 1800 North Market Street, Berwick, PA 18603.
Borough of Briar Creek	Briar Creek Borough Hall, 6029 Park Road, Berwick, PA 18603.
Borough of Catawissa	Borough Hall, 307 Main Street, Catawissa, PA 17820.
Borough of Millville	Borough Office, 136 Morehead Avenue, Millville, PA 17846.
Borough of Orangeville	Borough Building, 301 Mill Street, Orangeville, PA 17859.
Borough of Stillwater	Borough Hall, 63 McHenry Street, Stillwater, PA 17878.
Town of Bloomsburg	Town Hall, 301 East 2nd Street, Bloomsburg, PA 17815.
Township of Beaver	Beaver Township Secretary, 650 Beaver Valley Road, Bloomsburg, PA 17815.
Township of Benton	Township Building, 236 Shickshinny Road, Benton, PA 17814.
Township of Briar Creek	Briar Creek Township Municipal Building, 150 Municipal Road, Berwick, PA 18603.
Township of Catawissa	Township Building, 153 Old Reading Road, Catawissa, PA 17820.
Township of Cleveland	Cleveland Township Building, 46 Jefferson Road, Elysburg, PA 17824.
Township of Conyngham	Conyngham Township Building, 209 Smith Street, Wilburton, PA 17888.
Township of Fishing Creek	Fishing Creek Township Building, 3188 State Route 487, Orangeville, PA 17859.
Township of Franklin	Franklin Township Building, 313 Mount Zion Road, Catawissa, PA 17820.
Township of Greenwood	Greenwood Township Building, 90 Shed Road, Millville, PA 17846.
Township of Hemlock	Hemlock Township Building, 26 Firehall Road, Bloomsburg, PA 17815.
Township of Jackson	Jackson Municipal Building, 862 Waller-Divide Road, Benton, PA 17814.
Township of Locust	Locust Municipal Building, 1223A Numidia Drive, Catawissa, PA 17820.
Township of Madison	Madison Township Office, 136 Morehead Avenue, Millville, PA 17846.
Township of Main	Main Township Office, 345 Church Road, Bloomsburg, PA 17815.
Township of Mifflin	Mifflin Township Building, 201 East 1st Street, Mifflinville, PA 18631.
Township of Montour	Montour Township Office, 296 Jackson Street, Bloomsburg, PA 17815.
Township of Mount Pleasant	Mount Pleasant Community Center, 558 Millertown Road, Bloomsburg, PA 17815.
Township of North Centre	North Centre Township Building, 1059 State Route 93, Berwick, PA 18603.
Township of Orange	Orange Municipal Building, 2028 State Route 487, Orangeville, PA 17859.
Township of Pine	Pine Township Building, 309 Wintersteen School Road, Millville, PA 17846.
Township of Roaring Creek	Roaring Creek Township Secretary Building, 28 Brass School Road, Catawissa, PA 17820.
Township of Scott	Scott Municipal Building, 350 Tenny Street, Bloomsburg, PA 17815.
Township of South Centre	South Centre Municipal Building, 6260 4th Street, Bloomsburg, PA 17815.

Community	Community map repository address
Township of Sugarloaf	Sugarloaf Municipal Building, 90 Schoolhouse Road, Benton, PA 17814.
Ozaukee County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–2277	
City of Cedarburg	City Hall, W63N645 Washington Avenue, Cedarburg, WI 53012.
City of Mequon	City Hall, 11333 North Cedarburg Road, Mequon, WI 53092.
City of Port Washington	City Hall, 100 West Grand Avenue, Port Washington, WI 53074.
Unincorporated Areas of Ozaukee County	Administration Building, 121 West Main Street, Port Washington, WI 53074.
Village of Bayside	Village Hall, 9075 North Regent Road, Bayside, WI 53217.
Village of Belgium	Village Hall, 104 Peter Thein Avenue, Belgium, WI 53004.
Village of Fredonia	Village Hall, 242 Fredonia Avenue, Fredonia, WI 53021.
Village of Grafton	Village Hall, 860 Badger Circle, Grafton, WI 53024.
Village of Newburg	Village Hall, 620 West Main Street, Newburg, WI 53060.
Village of Saukville	Village Hall, 639 East Green Bay Avenue, Saukville, WI 53080.
Village of Thiensville	Village Hall, 250 Elm Street, Thiensville, WI 53092.

[FR Doc. 2024–06781 Filed 3–29–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of July 17, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Russell County, Alabama and Incorporated Areas Docket No.: FEMA–B–2319	
Unincorporated Areas of Russell County	Russell County Highway Department, 97 Poorhouse Road, Seale, AL 36875.
Tallapoosa County, Alabama and Incorporated Areas Docket No.: FEMA–B–2319	
City of Tallassee	City Hall, 3 Freeman Avenue, Tallassee, AL 36078.

Community	Community map repository address
Unincorporated Areas of Tallapoosa County	Tallapoosa County Courthouse, 125 North Broadnax Street, Dadeville, AL 36853.
Woodbury County, Iowa and Incorporated Areas Docket Nos.: FEMA–B–2145 and B–2313	
City of Anthon	City Hall, 301 East Main Street, Anthon, Iowa 51004.
City of Bronson	City Hall, 100 East 1st Street, Bronson, Iowa 51007.
City of Correctionville	City Hall, 312 Driftwood Street, Correctionville, Iowa 51016.
City of Cushing	City Hall, 200 Main Street, Cushing, Iowa 51018.
City of Danbury	City Hall, 207 1st Street, Danbury, Iowa 51019.
City of Hornick	City Hall, 400 Main Street, Hornick, Iowa 51026.
City of Lawton	City Hall, 315 Ash Street, Lawton, Iowa 51030.
City of Moville	City Hall, 21 West Main Street, Moville, Iowa 51039.
City of Oto	City Hall, 27 Washington Street, Oto, Iowa 51044.
City of Pierson	City Hall, 201 Main Street, Pierson, Iowa 51048.
City of Salix	City Hall, 317 Tipton Street, Salix, Iowa 51052.
City of Sergeant Bluff	City Hall, 501 4th Street, Sergeant Bluff, Iowa 51054.
City of Sioux City	City Hall-Planning Division, 405 6th Street, Sioux City, Iowa 51102.
City of Sloan	City Hall, 428 Evans Street, Sloan, Iowa 51055.
City of Smithland	City Hall, 110 West Jackson Street, Smithland, Iowa 51056.
Unincorporated Areas of Woodbury County	Woodbury County Courthouse, Community and Economic Development, 620 Douglas Street, Sioux City, Iowa 51101.
Winnebago Tribe of Nebraska	Winnebago Tribe of Nebraska, Blackhawk Center-Administrative Offices, 100 Bluff Street, Winnebago, Nebraska 68071.
Marion County, Kansas and Incorporated Areas Docket No.: FEMA–B–2329	
City of Burns	City Hall, 102 North Washington Avenue, Burns, KS 66840.
City of Durham	Marion County Offices, 200 South 3rd Street, Marion, KS 66861.
City of Florence	City Hall, 511 North Main Street, Florence, KS 66851.
City of Goessel	City Hall, 101 South Cedar Street, Goessel, KS 67053.
City of Hillsboro	City Hall, 118 East Grand Avenue, Hillsboro, KS 67063.
City of Marion	City Office, 208 East Santa Fe Street, Marion, KS 66861.
City of Peabody	City Hall, 300 North Walnut Street, Peabody, KS 66866.
City of Ramona	City Hall, 302 D Street, Ramona, KS 67475.
City of Tampa	Marion County Offices, 200 South 3rd Street, Marion, KS 66861.
Unincorporated Areas of Marion County	Marion County Offices, 200 South 3rd Street, Marion, KS 66861.
York County, Maine (All Jurisdictions) Docket No.: FEMA–B–1830 and FEMA–B–2271	
City of Biddeford	City Hall, 205 Main Street, Biddeford, ME 04005.
City of Saco	City Hall, 300 Main Street, Saco, ME 04072.
City of Sanford	Code Enforcement Office, 919 Main Street, Suite 159, Sanford, ME 04073.
Town of Acton	Town Hall, 35 H Road, Acton, ME 04001.
Town of Alfred	Town Hall, Code Enforcement Office, 16 Saco Road, Alfred, ME 04002.
Town of Arundel	Town Office, 257 Limerick Road, Arundel, ME 04046.
Town of Berwick	Town Hall, 11 Sullivan Street, Berwick, ME 03901.
Town of Buxton	Town Hall, 185 Portland Road, Buxton, ME 04093.
Town of Cornish	Town Hall, 17 Maple Street, Cornish, ME 04020.
Town of Dayton	Town Hall, 33 Clarks Mills Road, Dayton, ME 04005.
Town of Eliot	Town Hall, 1333 State Road, Eliot, ME 03903.
Town of Hollis	Town Hall, 34 Town Farm Road, Hollis, ME 04042.
Town of Kennebunk	Town Hall, Community Development Office, 1 Summer Street, Kennebunk, ME 04043.
Town of Kennebunkport	Town Hall, 6 Elm Street, Kennebunkport, ME 04046.
Town of Kittery	Town Hall, 200 Rogers Road, Kittery, ME 03904.
Town of Lebanon	Town Hall, 15 Upper Guinea Road, Lebanon, ME 04027.
Town of Limerick	Municipal Building, Code Enforcement Office, 55 Washington Street, Limerick, ME 04048.
Town of Limington	Municipal Complex, 425 Sokokis Avenue, Limington, ME 04049.
Town of Lyman	Town Hall, Code Enforcement Office, 11 South Waterboro Road, Lyman, ME 04002.
Town of Newfield	Newfield Town Office, 637 Water Street, West Newfield, ME 04095.
Town of North Berwick	Town Hall, 21 Main Street, North Berwick, ME 03906.
Town of Ogunquit	Town Hall, 23 School Street, Ogunquit, ME 03907.
Town of Old Orchard Beach	Town Hall, 1 Portland Avenue, Old Orchard Beach, ME 04064.
Town of Parsonsfield	Town Hall, 634 North Road, Parsonsfield, ME 04047.
Town of Shapleigh	Town Hall, 22 Back Road, Shapleigh, ME 04076.
Town of South Berwick	Town Hall, 180 Main Street, South Berwick, ME 03908.

Community	Community map repository address
Town of Waterboro	Waterboro Town Hall, 24 Townhouse Road, East Waterboro, ME 04030.
Town of Wells	Town Hall, 208 Sanford Road, Wells, ME 04090.
Town of York	Town Hall, 186 York Street, York, ME 03909.
Le Sueur County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2297	
City of Cleveland	City Hall, 205 4th Street, Cleveland, MN 56017.
City of Elysian	City Hall, 110 West Main Street, Elysian, MN 56028.
City of Heidelberg	Heidelberg City Hall, 31552 181st Avenue, New Prague, MN 56071.
City of Kasota	Community Center, 200 North Webster Street, Kasota, MN 56050.
City of Kilkenny	Fire Department, 156 South Laurel Avenue, Kilkenny, MN 56052.
City of Le Sueur	Municipal Building, 203 South 2nd Street, Le Sueur, MN 56058.
City of Montgomery	Municipal Building, 201 Ash Avenue SW, Montgomery, MN 56069.
City of New Prague	City Hall, Planning and Zoning Department, 118 Central Avenue North, New Prague, MN 56071.
City of Waterville	City Hall, 200 3rd Street South, Waterville, MN 56096.
Incorporated Areas of Le Sueur County	Le Sueur County Environmental Services Department, 88 South Park Avenue, Le Center, MN 56057.
Bradford County, Pennsylvania (All Jurisdictions) Docket Nos.: FEMA–B–1918, B–2101 and B–2283	
Borough of Athens	Municipal Building, 2 South River Street, Athens, PA 18810.
Borough of Sayre	Borough Office, 110 West Packer Avenue, Sayre, PA 18840.
Borough of South Waverly	Borough Hall, 2325 Pennsylvania Avenue, South Waverly, PA 18840.
Borough of Towanda	Municipal Building, 724 Main Street, Towanda, PA 18848.
Borough of Wyalusing	Borough Hall, 50 Senate Street, Wyalusing, PA 18853.
Township of Asylum	Asylum Township Building, 19981 Route 187, Towanda, PA 18848.
Township of Athens	Athens Township Municipal Building, 45 Herrick Avenue, Sayre, PA 18840.
Township of Burlington	Burlington Township Building, 2030 Weed Hill Road, Towanda, PA 18848.
Township of Litchfield	Litchfield Township Municipal Building, 1391 Hill Road, Sayre, PA 18840.
Township of North Towanda	North Towanda Township Office, 292 Old Mills Road, Towanda, PA 18848.
Township of Sheshequin	Sheshequin Township Office, 1774 North Middle Road, Ulster, PA 18850.
Township of Standing Stone	Standing Stone Township Building, 35165 Route 6, Wysox, PA 18854.
Township of Terry	Terry Township Building, 1876 Rienze Road, Wyalusing, PA 18853.
Township of Towanda	Township Office, 44 Chapel Street, Towanda, PA 18848.
Township of Tuscarora	Tuscarora Township Building, 2298 Underhill Road, Laceyville, PA 18623.
Township of Ulster	Municipal Building, 23849 Route 220, Ulster, PA 18850.
Township of Wilmot	Wilmot Township Municipal Building, 4861 Route 187, Sugar Run, PA 18846.
Township of Wyalusing	Township Hall, 41908 Route 6, Wyalusing, PA 18853.
Township of Wysox	Township Building, 103 Lake Road, Wysox, PA 18854.
Victoria County, Texas and Incorporated Areas Docket No.: FEMA–B–2303	
City of Victoria	700 Main Center-Development and Permitting Center, 702 North Main Street, Suite 128, Victoria, TX 77901.
Unincorporated Areas of Victoria County	Victoria County, Dr. Pattie Dodson Public Health Center, 2805 North Navarro Street, Suite 106, Victoria, TX 77901.
Shawano County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–2271	
City of Shawano	City Hall, 127 South Sawyer Street, Shawano, WI 54166.
Ho-Chunk Nation of Wisconsin	Tribal Office Building, W9814 Airport Road, Black River Falls, WI 54615.
Menominee Indian Tribe of Wisconsin	Tribal Office Building, W2908 Tribal Office Loop Road, Keshena, WI 54135.
Stockbridge Munsee Tribal Community	Tribal Office Building, N8476 MohHeConNuck Road, Bowler, WI 54416.
Unincorporated Areas of Shawano County	Shawano County Courthouse, 311 North Main Street, Shawano, WI 54166.
Village of Birnamwood	Village Hall, 362 Railroad Street, Birnamwood, WI 54414.
Village of Bonduel	Village Hall, 117 West Green Bay Street, Bonduel, WI 54107.
Village of Bowler	Village Hall, 107 West Main Street, Bowler, WI 54416.

Community	Community map repository address
Village of Cecil	Village Hall, 111 East Hofman Street, Cecil, WI 54111.
Village of Eland	Village Hall, W19141 Maple Street, Eland, WI 54427.
Village of Gresham	Village Hall, 1126 Main Street, Gresham, WI 54128.
Village of Mattoon	Village Hall, 310 Slate Avenue, Mattoon, WI 54450.
Village of Tigerton	Village Hall, 221 Birch Street, Tigerton, WI 54486.
Village of Wittenberg	Village Hall, 208 West Vinal Street, Wittenberg, WI 54499.

[FR Doc. 2024–06783 Filed 3–29–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6443–N–01]

Section 8 Housing Assistance Payments Program—Annual Adjustment Factors, Fiscal Year 2024

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development, HUD.

ACTION: Notice of fiscal year (FY) 2024 Annual Adjustment Factors (AAFs).

SUMMARY: The United States Housing Act of 1937 requires that certain assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustments to monthly rentals for units covered by the contracts. For owners subject to a Reserve for Replacement deposit requirement, HUD also requires that the amount of the required deposit be adjusted each year by the AAF. This notice announces FY 2024 AAFs for adjustment of contract rents on the anniversary of those assistance contracts. The factors are based on a formula using residential rent and utility cost changes from the most recent annual Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) survey and market rents from a total of six possible private sector rent data sources. AAFs were historically based on the shelter and gross rent inflation factors used in HUD's Fair Market Rent (FMR) calculation, and this notice maintains that practice by updating the AAF methodology in line with the FMR methodology changes that HUD adopted for FY 2024.

DATES: The FY 2024 AAFs are effective April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Ryan Jones, Director, Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, 202–708–1380, for questions relating to the Moderate Rehabilitation programs (not the Single Room Occupancy program); Norman A. Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202–402–5015, for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Katherine Nzive, Director, OAMPO Program Administration Office, Office of Multifamily Housing, 202–402–3440, for questions relating to all other Section 8 programs; and Adam Bibler, Director, Program Parameters and Research Division, Office of Policy Development and Research, 202–402–6057, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. The mailing address for these individuals is: Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. 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: The AAFs are applied at the anniversary of Housing Assistance Payment (HAP) contracts for which rents are to be adjusted using the AAF for those calendar months commencing after the AAF effective date listed in this notice. The amount that an owner is required to deposit to the Reserve for Replacement account is also adjusted annually by the most recently published AAF, at the HAP contract anniversary. AAFs are distinct from, and do not apply to the same properties as, Operating Cost Adjustment Factors (OCAFs). OCAFs are annual factors used to adjust rents for project-based rental assistance contracts issued under Section 8 of the United States Housing Act of 1937 and renewed under section 515 or section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). HUD has published OCAFs for 2024 in the **Federal Register** at 87 FR 68513. The AAFs are also distinct from Renewal Funding Inflation Factors which help determine renewal funding for public housing agencies operating the Housing Choice Voucher program. A separate **Federal Register** notice, to be published following the passage of FY 2024 HUD appropriations, will contain the 2024 Renewal Funding Inflation Factors.

Tables showing AAFs will be available electronically from the HUD data information page at *http://www.huduser.gov/portal/datasets/aaf.html.*

I. Applying AAFs to Various Section 8 Programs

AAFs established by this notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (*i.e.,* pre-renewal) term of the HAP contract. There are two categories of Section 8 programs that use the AAFs:

Category 1: The Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs; and

Category 2: The Section 8 Loan Management Set-Aside (LMSA) and Property Disposition (PD) programs.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are established in accordance with the statutory provision in MAHRA, as amended, under which the HAP is renewed. After renewal, annual rent adjustments will be provided in accordance with MAHRA.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LMSA program (24 CFR part 886, subpart A) and for

projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

Housing Choice Voucher Program. AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

Reserve for Replacement. The amount that an owner is required to deposit to the Reserve for Replacement account is adjusted annually by the AAF at the HAP contract anniversary.

II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002–10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97–57 (Moderate Rehabilitation). HUD publishes two separate AAF Tables, Table 1 and Table 2. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute. Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program), the published AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.,* unless the contract rent is reduced by comparability):

- Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: Section 8 Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

Category 2 programs are not currently subject to comparability. Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).

The applicable AAF is determined as follows:

- Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Reserve for Replacement

The amount of the deposit to the Reserve for Replacement account must be increased annually using the most recently published ''Regional AAF with Highest Utility Excluded'' for the region in which the project is located. This adjustment must be made without regard to vacancies.

III. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

> In Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> [F]or any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor . . . 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

Legislative history for this statutory provision states that ''the rationale [for lower AAFs for non-turnover units is] that operating costs are less if tenant turnover is less . . . .'' (see Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994)). The Congressional Record also states the following:

> Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in the unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants in section 8 projects . . . HUD should expect to benefit from this 'tenure discount.' Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

IV. How To Find the AAF

AAF Table 1 and Table 2 are posted on the HUD User website at *http://www.huduser.gov/portal/datasets/aaf.html.* There are two numeric columns in each AAF table. The first column is used to adjust contract rent for rental units where the highest cost utility is included in the contract rent, *i.e.,* where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, *i.e.,* where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for ''Highest Cost Utility Included.'' If highest cost utility is not included, select the AAF from the column for ''Highest Cost Utility Excluded.''

V. Methodology

AAFs are rent inflation factors. Two types of rent inflation factors are calculated for AAFs: gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the

utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence but does not reflect any change in the cost of utilities. The gross rent inflation factor is designated as ''Highest Cost Utility Included'' and the shelter rent inflation factor is designated as ''Highest Cost Utility Excluded.'' In the past, HUD has calculated AAFs based on the shelter and gross rent inflation factors used in FMR calculations. The source data for AAFs therefore came from the 23 local and 4 regional CPI components (rent of primary residence and household fuels and utilities) depending on the location of the AAF area. HUD maintains the practice of updating the AAF methodology in line with the FMR methodology changes that HUD adopted for FY 2024. For FY 2024, HUD augmented the CPI data described above by including available private data sources along with the CPI data in calculating a weighted average shelter and gross rent inflation factor. The private measures of rent used by HUD are the RealPage average effective rent per unit, Moody's Analytics REIS average market rent, CoStar Group average effective rent, CoreLogic, Inc. single-family combined 3-bedroom median rent, Apartment List Rent Estimate, and Zillow Observed Rent Index.

In calculating the AAF from these data, HUD first takes the annual average of each statistic, then its year-to-year change. HUD then takes the mean of changes from all available sources for each area. Next, HUD takes an average of this private-sector measure of rent inflation with rent inflation as captured by the CPI for the area, where the private-sector measure is weighted at approximately 55.8 percent and the CPI rent inflation measure is weighted at approximately 44.2 percent. HUD has determined these weights by comparing the national average of the private rent changes and changes in CPI rent of primary residence to changes in the national average of recent mover rents from the ACS from 2017 through 2021. HUD weights the private data averages and overall CPI rent of primary residence in such a way as to minimize the root mean squared error between the resulting average and the ACS recent mover rents. For future AAFs, HUD will update the weights by adding the most recent years of ACS recent mover rents, private rent data, and CPI rent of primary residence to the analysis.

HUD uses a local measure of private rent inflation for markets that are covered by at least three of the six available sources of private rent data. HUD combines this local measure of rent inflation with either the local metropolitan area CPI rent of primary residence for the 23 areas where such data exist, or the regional CPI rent in areas without a local index. For areas without at least three of the six private rent data sources available, HUD uses a regional average of private rent inflation factors alongside the regional CPI rent of primary residence. HUD constructs the regional average by taking the rental unit weighted average of the change in rents of each area in a region that does have private rent data coverage. This ensures that smaller areas that are not covered by the private sources directly still have current rental market conditions taken into account in the calculation of the rent inflation factor for such areas.

The results of the above calculation are the ''utility excluded'' AAF. For the ''utility included'' AAF, HUD averages the result of this step with the year-to-year change in the CPI housing fuels and utilities index for the area in order to make the resulting inflation measure reflective of gross rents.

VI. Area Definitions

To make certain that they are using the correct AAFs, users should refer to the Area Definitions Table section at *http://www.huduser.gov/portal/datasets/aaf.html.* Furthermore, users can also search for AAF area definitions using an online lookup tool available on HUD User at *https://www.huduser.gov/portal/datasets/aaf.html.* AAFs are based on the updated metropolitan area definitions published by the Office of Management and Budget (OMB) on September 14, 2018, and first incorporated by the Census Bureau into the 2019 American Community Survey (ACS) data and the corresponding FY 2022 FMRs. On July 21, 2023, OMB published Bulletin No. 23–01, which contains revisions to metropolitan area definitions. However, the Census Bureau has not yet incorporated these revisions into the data available to HUD, and therefore HUD is not using these new definitions for FY 2024.

Solomon Greene,

Principal Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2024–06798 Filed 3–29–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2024–N020; FXES11130200000–245–FF02ENEH00]

Endangered Wildlife; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act (ESA) prohibits certain activities that may impact endangered species, unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please submit your written comments by May 1, 2024.

ADDRESSES:

Document availability: Request documents from the contact in the **FOR FURTHER INFORMATION CONTACT** section.

Comment submission: Submit comments by email to *fw2_te_permits@fws.gov.* Please specify the permit application you are interested in by number (*e.g.,* Permit Record No. PER1234567).

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Supervisor, Environmental Review Division, by phone at 505–248–6651, or via email at *marty_tuegel@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:

Background

With some exceptions, the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as

pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving listed species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species' propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Our release of documents is subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the permit record number when submitting comments.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER6195945	Wildlife World Zoo, Inc.; Litchfield Park, Arizona.	Kemp's ridley sea turtle (*Lepidochelys kempii*).	Arizona	Educational display.	Harass, harm	New.
PER5348794	Vaughn, Caryn; Norman, Oklahoma.	Ouachita rock pocketbook (*Arcidens wheeleri*), scaleshell mussel (*Leptodea leptodon*), winged mapleleaf (*Quadrula fragosa*).	Arkansas, Missouri, Oklahoma	Presence/absence surveys.	Harass, harm	New.
PER5348793	Cantu, Eric; Edinburg, Texas.	Texas hornshell (*Popenaias popeii*).	Texas	Presence/absence surveys.	Harass, harm	New.
PER5530131	Martin, Keith; Claremore, Oklahoma.	Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), Ozark big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii ingens*), northern long-eared bat (*Myotis septentrionalis*).	Arkansas, Kansas, Missouri, Oklahoma.	Presence/absence surveys.	Harass, harm	Renew.
PER5699079	McLean, Jesse; Dallas, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harass, harm	Renew.
PER6816223	Gonzales, Kelly; Houston, Texas.	Gulf coast jaguarundi (*Puma yagouaroundi cacomitli*), ocelot (*Leopardus* (=*Felis*) *pardalis*), northern aplomado falcon (*Falco femoralis septentrionalis*).	Arizona, New Mexico, Texas	Presence/absence surveys.	Harass, harm	Renew/amend.
PER7135821	Tulsa District U.S. Army Corps of Engineers; Tulsa, Oklahoma.	Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), Ozark big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii ingens*) Ouachita rock pocketbook (*Arcidens wheeleri*), winged mapleleaf (*Quadrula fragosa*).	Kansas, Oklahoma	Presence/absence surveys, handle, tag, salvage, bio-sample, band.	Capture, harass, harm.	Renew.
PER8668105	Center of Excellence for Hazardous Materials Management; Carlsbad, New Mexico.	Lesser prairie-chicken (*Tympanuchus pallidicinctus*).	New Mexico	Presence/absence surveys, lek tours.	Harass, harm	New.
PER6353114	Solari, Whitney; Bryan, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harass, harm	New.
PER7248560	Raven Environmental Services, Inc.; Huntsville, Texas.	Red-cockaded woodpecker (*Picoides borealis*).	Louisiana, Texas	Presence/absence surveys, nest monitoring, band, sexing, translocation, artificial cavity installation.	Capture, harass, harm.	Renew/amend.
PER7365932	Kutz, Julie; Albuquerque, New Mexico.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	New Mexico	Presence/absence surveys.	Harass, harm	Renew.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER7032540	Blankenship, Ryan; Duncanville, Texas.	Gray bat (*Myotis grisescens*), Ozark big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii ingens*), northern long-eared bat (*Myotis septentrionalis*), Indiana bat (*Myotis sodalis*), lesser prairie-chicken (*Tympanuchus pallidicinctus*), fountain darter (*Etheostoma fonticola*), Neosho mucket (*Lampsilis rafinesqueana*), Ouachita rock pocketbook (*Arcidens wheeleri*), scaleshell mussel (*Leptodea leptodon*), winged mapleleaf (*Quadrula fragosa*).	Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Vermont, Wisconsin, Wyoming.	Presence/absence surveys, handle, tag, salvage, bio-sample, band.	Capture, harass, harm.	New.
PER8778179	Baer Engineering and Environmental Consulting, Inc.; Austin, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harass, harm ...	Amend.
PER9199896	Bey, Trinity; Boerne, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harass, harm ...	Renew.
PER8778158	Blackland Environmental, LLC.; Garden Ridge, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*), red-cockaded woodpecker (*Picoides borealis*), Houston toad (*Bufo houstonensis*).	Louisiana, Texas	Presence/absence surveys.	Harass, harm ...	New.
PER8668106	Hall, Ellen; Fort Worth, Texas.	Gray bat (*Myotis grisescens*), Ozark big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii ingens*), northern long-eared bat (*Myotis septentrionalis*), Indiana bat (*Myotis sodalis*).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Wyoming.	Presence/absence surveys, handle, tag, salvage, bio-sample, band.	Capture, harass, harm.	New.
PER9200393	SeaWorld of Texas; San Antonio, Texas.	Kemp's ridley sea turtle (*Lepidochelys kempii*), hawksbill sea turtle (*Eretmochelys imbricata*).	Texas	Rehabilitate, educational display.	Capture, harass, harm.	Renew.
PER8748209	University of Texas Austin; Austin, Texas.	Big Bend gambusia (*Gambusia gaigei*).	Texas	Presence/absence surveys, trap, anesthetize.	Capture, harass, harm.	New.
PER9229906	Gluesenkamp, Andrew; Driftwood, Texas.	Barton Springs salamander (*Eurycea sosorum*), Austin blind salamander (*Eurycea waterlooensis*), Peck's Cave amphipod (*Stygobromus* (=*Stygonectes*) *pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), Texas blind salamander (*Eurycea rathbuni*), Mexican blindcat (*Prietella phreatophila*).	Texas	Presence/absence surveys, collect, voucher specimen.	Capture, harass, harm, kill.	New.
PER9229948	Bureau of Reclamation—Boulder City; Boulder City, Nevada.	Southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma Ridgway's rail (*Rallus obsoletus yumanensis*).	Arizona, California	Presence/absence surveys, band, tag.	Capture, harass, harm.	Amend.
PER9229950	Burns, Jodie; Bentonville, Arkansas.	Red-cockaded woodpecker (*Picoides borealis*).	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, Texas, Virginia.	Presence/absence surveys.	Harass, harm ...	Amend.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, National Environmental Policy Act, and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Amy Lueders,

Regional Director, Southwest Region.

[FR Doc. 2024–06830 Filed 3–29–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–NWRS–2024–N009; FXRS12610800000–245–FF08R04000]

Beneficial Reuse of Excavated Material in Tidal Marsh Restoration; Intent To Prepare Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) and the Santa Clara Valley Transportation Authority propose to act in partnership to prepare a joint draft environmental impact statement/environmental impact report to evaluate the impacts on the environment related to placing excavated or other fill material into several former salt production ponds on, and adjacent to, Don Edwards San Francisco Bay National Wildlife Refuge to raise the pond bottoms for the purpose of accelerating the timeline for tidal marsh habitat restoration. The Service is providing this notice to open a public scoping period in accordance with the requirements of the National Environmental Policy Act and its implementing regulations. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than May 16, 2024.

ADDRESSES: You may submit written comments and materials by one of the following methods:

- *U.S. Mail:* San Francisco Bay National Wildlife Refuge Complex, Attn: Beneficial Reuse Project, 1 Marshlands Road, Fremont, CA 94555.
- *Email: fw8plancomment@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Matthew Brown, Complex Manager, San Francisco Bay National Wildlife Refuge Complex, via email at *matthew_brown@fws.gov* or via phone at 510–453–6695. 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 U.S. Fish and Wildlife Service (Service) and the Santa Clara Valley Transportation Authority, in cooperation with the Santa Clara Valley Water District, propose to prepare a joint draft environmental impact statement/environmental impact report to evaluate the effects of placing excavated or other fill material into several former salt production ponds around South San Francisco Bay to raise the pond bottoms for the purpose of accelerating the timeline for tidal marsh habitat restoration. The joint draft environmental impact statement/environmental impact report would analyze the Beneficial Reuse of Excavated Material in Tidal Marsh Restoration Project (Beneficial Reuse Project) at both a project level and a programmatic level.

The Beneficial Reuse Project would be analyzed at a project level by explicitly evaluating the potential transport and placement of up to 3.5 million cubic yards of excavated material from VTA's BART Silicon Valley-Phase II Extension Project (BSVII project) for the purpose of raising the deeply subsided pond bottoms. For the project-level analysis, the Beneficial Reuse Project would be implemented at the Pond A8 Complex (consisting of Ponds A5, A7, A8, and A8S), Pond A12, and Pond A13 within the Don Edwards San Francisco Bay National Wildlife Refuge. These ponds are owned by the USFWS and are part of the Alviso Pond Complex. The Beneficial Reuse Project would also be implemented at Pond A4, which is owned by Valley Water. These ponds were selected for analysis at the project level as they are relatively close to the BSVII Project site compared to other ponds in the South Bay.

The Beneficial Reuse Project would also be analyzed at a programmatic level by evaluating the transport and placement of excavated material from future projects yet to be identified. Placement of such material could occur in the Ravenswood Pond Complex (except Pond SF2), the Alviso Pond Complex (including the A8 Complex, A12, and A13, and excluding A22 and A23), and Pond A4. The programmatic analysis would allow other project proponents to use the joint draft environmental impact statement/environmental impact report as the basis for their future projects that would also transport and place excavated material into the ponds for the purpose of raising pond bottoms. These other project proponents would need to conduct additional environmental analysis at the project-level once their projects are sufficiently defined.

We are requesting comments concerning the scope of the analysis and identification of relevant information and studies.

Purpose and Need for the Proposed Action

The purpose of the Beneficial Reuse Project is to:

- Transport BSVII Project tunnel excavation material and other excavated material to select former salt production ponds in South San Francisco Bay for beneficial reuse.
- Place excavated material within select ponds to raise the elevation of pond bottoms to accelerate the timeline for and increase the certainty of tidal marsh restoration.
- Place excavated material in the Pond A8 Complex and/or other select ponds with legacy mercury to cover and bury contaminated sediments to reduce the potential for mercury to bioaccumulate through the aquatic environment.

The need for the Beneficial Reuse Project is as follows:

- The BSVII Project will generate a considerable amount of excavated material on a daily basis during construction of the 5-mile-long tunnel and other facilities. The material must be hauled off site regularly to keep pace

with construction and limited onsite storage facilities.

- The former salt production ponds in South San Francisco Bay require large quantities of sediment to raise the elevation of deeply subsided pond bottoms to eventually reach marsh plain elevation where tidal marsh restoration can occur (as part of a future action). Placing excavated material into the pond bottoms would accelerate the timeline for eventual tidal marsh restoration relative to sedimentation from natural processes (*i.e.,* tidal action) alone. This is especially important in the face of sea-level rise and the sediment deficit in San Francisco Bay.
- There is high mercury concentration in the sediments of the Pond A8 Complex and nearby ponds as a result of historic mining operations in the Guadalupe River watershed. Natural tidal action can cause the resuspension of sediment containing mercury and increase the potential for bioaccumulation of mercury in aquatic organisms. Placing excavated material into the pond bottoms would cover sediment contaminated with mercury and reduce the potential for mercury to bioaccumulate through the aquatic environment.

Preliminary Proposed Action and Alternative

One Proposed Action Alternative and the No Action Alternative will be evaluated in the draft environmental impact statement/environmental impact report. The draft environmental impact statement/environmental impact report will analyze the Proposed Action Alternative on a project-level and a programmatic level, as discussed below.

The project-level components of the Proposed Action Alternative would send all excavated material from the BSVII Project to the project-level ponds (Ponds A4, A8 Complex, A12, and A13). The Proposed Action Alternative would include two methods for hauling excavated material from the BSVII Project to the project-level ponds: truck haul method and rail haul method. Under the truck haul method, the Proposed Action Alternative assumes use of a truck haul route on State Route 237, then use of local streets to reach the project-level ponds. Under the rail haul method, the Proposed Action Alternative would include the use of rail to haul material from the future BSVII Project Newhall Maintenance Facility. This method would include construction of additional tracks at the maintenance facility, an option to construct a spur track near Pond A12, and an option to use an existing spur track that leads to the GreenWaste Zanker Resource Recovery Facility near Los Esteros Road in San Jose. Under the rail haul method, improvements would be required at the future BSVII Project Newhall Maintenance Facility. The truck haul method and the rail haul method could be used exclusively or in combination.

The Proposed Action Alternative would include three methods for the placement of excavated material within the project-level ponds once it is offloaded near a pond shoreline by truck or conveyor belt: conventional equipment method, hydraulic methodologies, and/or conveyor system methodologies. The Proposed Action Alternative could use one, two, or all three of these methods at any project-level pond.

The programmatic analysis would evaluate the addition of excavated material from future projects yet to be identified for all the ponds covered in the joint draft environmental impact statement/environmental impact report. The programmatic analysis would allow other project proponents to use the joint draft environmental impact statement/environmental impact report as the basis for their future projects that would also transport and place excavated material into the ponds for the purpose of raising pond bottoms. These other project proponents would need to conduct additional environmental analysis at the project-level once their projects are sufficiently defined.

Under the No Action Alternative, all excavated material generated by the BSVII Project would be transported to the disposal sites identified in Santa Clara Valley Transportation Authority's 2018 *BART Silicon Valley-Phase II Extension Project Final Supplemental Environmental Impact Statement/ Subsequent Environmental Impact Report and Section 4(f) Evaluation,* which includes landfills and quarries. No excavated material from the BSVII Project or any other project would be sent to any of the Beneficial Reuse Project project-level or programmatic-level ponds to be placed in the ponds for the purpose of raising the pond bottoms to accelerate the timeline for tidal marsh habitat restoration.

Summary of Expected Impacts

Based on our initial evaluation of the Proposed Action Alternative, the following impacts would be expected: construction waste reuse; greenhouse gas emissions reductions; short-term disturbance to and changes in habitat conditions for listed and sensitive species; fill in waters of the U.S. and State of California, temporary increases in dust and other air pollutants during construction; changes to movement of water within ponds caused by changing the elevation of pond bottoms; temporary impacts to water quality during material placement; temporary changes to existing public access; and temporary increases in construction traffic on the roadways within the vicinity of the ponds, including the Alviso neighborhood. Indirect benefits would result from facilitating future restoration of tidal marsh habitat by raising the bottoms of former salt production ponds, allowing vegetated marsh to be restored much more quickly when tidal restoration occurs in the future by others.

Anticipated Permits and Authorizations

The following permits and other authorizations are anticipated to be required:

- U.S. Army Corps of Engineers Clean Water Act (CWA) section 404 permit and Rivers and Harbors Act section 10 permit and others, if appropriate;
- San Francisco Bay Regional Water Quality Control Board CWA section 401 water quality certification;
- California Department of Fish and Wildlife lake and streambed alteration agreement;
- California Department of Fish and Wildlife section 2081(b) incidental take permit;
- San Francisco Bay Conservation and Development Commission consistency determination;
- Refuge special-use permit to the Santa Clara Valley Transportation Authority for construction access and activities on Refuge lands;
- Consultation pursuant to section 7 of the Federal Endangered Species Act with the U.S. Fish and Wildlife Service and National Marine Fisheries Service;
- Consultation with the National Marine Fisheries Service regarding essential fish habitat under the Magnuson-Stevens Fishery Conservation and Management Act, and consultation regarding marine mammals pursuant to the Marine Mammal Protection Act; and
- Consultation with Tribes and the State Historic Preservation Officer pursuant to section 106 of the National Historic Preservation Act.

Schedule for the Decision-Making Process

Processing of the environmental impact statement, from the public scoping stage to the signing of the record of decision, is expected to take up to 2 years. The draft environmental impact statement/environmental impact report is scheduled for release in early 2025. The final environmental impact

statement is scheduled for completion by mid-2025, with the record of decision expected to be issued in mid-2025. Permitting is expected to be completed at approximately the same time as the signing of the record of decision. Subsequent actions will involve the processing of all required permits needed to implement the beneficial reuse of excavated materials.

Environmental Impact Statement Public Scoping Process

This notice of intent initiates the 45-day scoping process, which guides the development of the draft environmental impact statement. The scoping process is designed to elicit comments from the public, public agencies, Tribal governments, and other interested parties on the scope of the draft environmental impact statement. All interested parties are encouraged to provide written comments on the scope of the environmental impact statement.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

The Service requests comments concerning the scope of the analysis and identification of relevant information and studies. All interested parties are invited to provide input related to the identification of potential alternatives, information, and analyses relevant to the Proposed Action Alternative in writing. All written comments should be submitted via any of the methods provided under **ADDRESSES**.

Lead and Cooperating Agencies

The Service is the lead agency for the environmental impact statement. The Santa Clara Valley Transportation Authority will serve as the lead State agency.

Decision Maker

The Decision Maker is the Service's Regional Director for the U.S. Fish and Wildlife Service, Pacific Southwest Region.

Nature of Decision To Be Made

The Regional Director, after considering the analysis and information provided in the final environmental impact statement, as well as the comments received throughout the draft environmental impact statement review process, will determine if the proposed action sufficiently achieves the purpose and need for the project. The decision, which will be documented in the Record of Decision, will also consider the consistency of the action with agency policies, regulations, and applicable laws, and the contribution the action will make towards achieving the purposes for which the Don Edwards San Francisco Bay National Wildlife Refuge was established, while also contributing to the mission and goals of the National Wildlife Refuge System.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This document is published under the authority of the National Environmental Policy Act regulations pertaining to the publication of a notice of intent to issue an environmental impact statement (40 CFR 1501.9(d)).

Jill Russi,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2024–06833 Filed 3–29–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_MT_FRN_MO_4500178630]

Notice of Proposed Filing of Plats of Survey; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed official filing.

SUMMARY: The plats of surveys for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana. The surveys, which were executed at the request of the United States Forest Service, Fort Pierre Ranger District, South Dakota are necessary for the management of these lands.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than May 1, 2024.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Joshua Alexander, BLM Chief Cadastral Surveyor for South Dakota; telephone: (406) 896–5123; email: *jalexand@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Alexander. 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 lands surveyed are:

Fifth Principal Meridian, South Dakota

T. 107 N., R. 78 W.
secs. 6 and 7.
T. 107 N., R. 79 W.
sec. 1.

A person or party who wishes to protest an official filing of a plat of survey identified earlier must file a written notice of protest with the BLM Chief Cadastral Surveyor for South Dakota at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the date described in the **DATES** section of this notice; If received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for South Dakota within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10-calendar-day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified in the notice of protest will be stayed pending consideration of the protest. Upon receipt of a timely protest, and after a review of the protest, the Authorized Officer will issue a decision either dismissing or otherwise resolving the protest. A plat of survey will then be officially filed 30 days after the protest decision has been issued in accordance with 43 CFR part 4.

If a notice of protest is received after the date described in the **DATES** section

of this notice and the 10-calendar-day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. chapter 3)

Joshua F. Alexander,

Chief Cadastral Surveyor for South Dakota.

[FR Doc. 2024–06849 Filed 3–29–24; 8:45 am]

BILLING CODE 4331–20–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–37701; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before March 23, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by April 16, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before March 23, 2024. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

KENTUCKY

Campbell County

York Street Historic District (Boundary Increase), 400–629 York Street, 904–1032 Orchard Street, 11–40 East 9th Street, Newport, BC100010241

Fayette County

Schwert, Drs. George W. & Margaret, House, 3316 Braemer Drive, Lexington, SG100010248

Jefferson County

Wade-Braden District, 4010 Clyde Drive (40216) & 4403 Virginia Avenue (40211), Louisville, SG100010246

Shelby Park Historic District, Roughly bounded by I–65 to the west, East Kentucky Street to the north, and CSX Railroad tracks to the west and south, Louisville, SG100010247

Irish Hill Historic District, Roughly bounded by I–64, Lexington Road, Bishop Street, and Cave Hill Cemetery, Louisville, SG100010253

Jessamine County

St. Luke Catholic Church, 304 South Main Street, Nicholasville, SG100010244,

Glass Mill Road Four Arch Bridge, On Glass Mill Road crossing Jessamine Creek, Wilmore, SG100010245

Perry County

Ritchie Family Home Place, 88 Slabtown Hollow, Viper, SG100010243

TEXAS

Bexar County

Institute of Texan Cultures, 801 E Cesar Chavez, San Antonio, SG100010249

Gregg County

Greggton Commercial Historic District, Bounded by West Marshall Avenue/US Highway 80 to the south, North Supply Street to the west, West Aztec Alley to the north, and Pine Tree Road to the east, Longview, SG100010239

WISCONSIN

Milwaukee County

Lakeview Hospital, 1749 North Prospect Avenue, Milwaukee, SG100010240

Additional documentation has been received for the following resource(s):

ARIZONA

Maricopa County

Fraser Fields Historic District (Additional Documentation), Fraser Dr W to Fraser Dr E; Third Pl to Pepper Pl (67 North Fraser Drive E, Mesa vicinity, AD10000535

Pima County

Blenman-Elm Historic District (Additional Documentation), 1625 North Stewart Avenue, Tucson, AD03000318

El Montevideo Historic District (Additional Documentation), 3700 and 3800 blocks of streets between Broadway & 5th St. (3837 E Calle Cortez), Tucson, AD94001070

KENTUCKY

Campbell County

York Street Historic District (Additional Documentation), York St. from Seventh St. to Tenth St., Newport, AD95000640

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2024–06801 Filed 3–29–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0015]

Notice of Availability of the Area Identification for the Proposed Gulf of Mexico Oil and Gas Lease Sales for Years 2024–2029

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Availability of area identification.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the Area Identification (Area ID) for the proposed Gulf of Mexico (GOM) oil and gas Lease Sales 262, 263, and 264.

ADDRESSES: The Area ID is available for viewing and downloading on BOEM's website at *https://www.boem.gov/oil-gas-energy/national-program/2024-2029-gom-area-identification.* It also may be obtained from the Bureau of Ocean Energy Management, New

Orleans Office, 1201 Elmwood Park Blvd., New Orleans, LA 70123; telephone (800) 200–4853.

FOR FURTHER INFORMATION CONTACT: Bernadette Thomas, Supervisor of Leasing and Plans, GOM Regional Office, (504) 736–2596, *bernadette.thomas@boem.gov* or Ben Burnett, Chief, Leasing Policy and Management Division, (703) 787–1782, *benjamin.burnett@boem.gov.*

SUPPLEMENTARY INFORMATION: On December 14, 2023, the Secretary of the Interior approved the 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Program (National OCS Program). The first proposed sale under that program, Lease Sale 262, is tentatively scheduled for 2025. Details of the 2024–2029 National OCS Program can be found at *https://www.boem.gov/oil-gas-energy/national-program/national-ocs-oil-and-gas-leasing-program.*

In accordance with 30 CFR 556.301, BOEM published a Call for Information and Nominations (Call) [1] on the area identified in the 2024–2029 National OCS Program for the proposed lease sales. The Call solicited industry nominations for areas of leasing interest and sought comments and information from the public on the areas being considered. BOEM considered the comments received in response to the Call and identified the areas that warranted further consideration and analyses of the potential effects of leasing on the human, marine, and coastal environments. The result is this Area ID.

This Area ID is not a decision to lease and is not a prejudgment by the Department of the Interior on how or whether to proceed with proposed Lease Sales 262, 263, and 264. A decision to lease must be preceded by several preleasing steps, including, but not limited to, completion of environmental analyses pursuant to the National Environmental Policy Act; consultation under environmental and other statutes; opportunities for federally recognized Tribes, Governors of affected States, local government leaders, and other interested parties to provide comment; and the issuance of Proposed and Final Notices of Sale.

Authority: Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331–1356), and 30 CFR 556.302.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2024–06784 Filed 3–29–24; 8:45 am]

BILLING CODE 4340–98–P

[1] 88 FR 67801 (October 2, 2023).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Second Review)]

Utility Scale Wind Towers From China and Vietnam; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on utility scale wind towers from China and the antidumping duty order on utility scale wind towers from Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 1, 2024. To be assured of consideration, the deadline for responses is May 1, 2024. Comments on the adequacy of responses may be filed with the Commission by June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202–708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 15, 2013, the Department of Commerce (''Commerce'') issued a countervailing duty order on utility scale wind towers from China and antidumping duty orders on utility scale wind towers from China and Vietnam (78 FR 11146–11148 and 11150–11154). Following the first five-year reviews by Commerce and the Commission, effective May 17, 2019, Commerce issued a continuation of the antidumping and countervailing duty orders on utility scale wind towers from China and the antidumping duty order on utility scale wind towers from Vietnam (84 FR 22442, May 17, 2019). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full first five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of all wind towers coextensive with Commerce's scope definition.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full first five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of the *Domestic Like Product.*

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is

sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on May 1, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on June 7, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–594, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how,

including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2018.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in number of towers and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in number of towers and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in number of towers and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2018, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product*

produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 26, 2024.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2024–06743 Filed 3–29–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–597 and 731–TA–1407 (Review)]

Cast Iron Soil Pipe From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on cast iron soil pipe from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 1, 2024. To be assured of consideration, the deadline for responses is May 1, 2024. Comments on the adequacy of responses may be filed with the Commission by June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Alexis Yim (202–708–1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 3, 2019, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of cast iron soil pipe from China (86 FR 19035 and 19039). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all cast iron soil pipe, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of all domestic producers of cast iron soil pipe.

(5) The *Order Date* is the date that the orders under review became effective. In these reviews, the *Order Date* is May 3, 2019.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized

applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on May 1, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on June 7, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–593, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for

the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 26, 2024.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2024–06742 Filed 3–29–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1675–1678 (Preliminary)]

Dioctyl Terephthalate (''DOTP'') From Malaysia, Poland, Taiwan, and Turkey; Notice of Institution of Antidumping Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping duty investigation Nos. 731–TA–1675–1678 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of DOTP from Malaysia, Poland, Taiwan, and Turkey, provided for in subheadings 2917.39.20, 2917.39.70, and 3812.20.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by May 10, 2024. The Commission's views must be transmitted to Commerce within five business days thereafter, or by May 17, 2024.

DATES: March 26, 2024.

FOR FURTHER INFORMATION CONTACT: Calvin Chang (202–205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to petitions filed on March 26, 2024, by Eastman Chemical Company, Kingsport, Tennessee.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on Tuesday, April 16, 2024. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before Friday, April 12, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on April 19, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on April 15, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 26, 2024.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2024–06791 Filed 3–29–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–602 and 731–TA–1412 (Review)]

Steel Wheels From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing and antidumping duty orders on imports of steel wheels from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this

notice by submitting the information specified below to the Commission.

DATES: Instituted April 1, 2024. To be assured of consideration, the deadline for responses is May 1, 2024. Comments on the adequacy of responses may be filed with the Commission by June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202–708–1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 24, 2019, the Department of Commerce (''Commerce'') issued countervailing and antidumping duty orders on imports of steel wheels from China (84 FR 24098). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determination in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined the *Domestic Like Product* as all steel wheels coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all domestic producers of steel wheels.

(5) The *Order Date* is the date that the countervailing and antidumping duty orders under review became effective. In these reviews, the *Order Date* is May 24, 2019.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on May 1, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing

such comments is on or before 5:15 p.m. on June 7, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–596, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the reviews.

Information to Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in wheels and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in wheels and value data in U.S.

dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in wheels and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 26, 2024.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2024–06740 Filed 3–29–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1395]

Certain Aerosol Fire Extinguishing Technology, Components Thereof, and Products Containing Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 22, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of Nano Fire LLC of Plainview, New York and Defender Safety, LLC of Plainview, New York. Supplements to the complaint were filed on February 27, March 12, and March 13, 2024. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain aerosol fire extinguishing technology, components thereof, and products containing same by reason of the infringement of certain claims of U.S. Patent No. 8,865,014 (''the '014 patent'') and U.S. Patent No. 9,199,108 (''the '108 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 25, 2024, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–4 of the '014 patent and claims 1–3

and 10 of the '108 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''aerosol fire extinguishing generators and systems containing a fire extinguishing composition that produces a fire[ ] extinguishing substance through high-temperature sublimation or decomposition'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Nano Fire LLC, 30 Skyline Drive, Plainview, NY 11803

Defender Safety Inc., 30 Skyline Drive, Plainview, NY 11803

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Halma Plc, Misbourne Court, Rectory Way, Amersham, Bucks HP7 0DE, UK

Halma Holdings LLC, 535 Springfield Avenue, Suite 110, Summit, NJ 07901

FirePro Systems, Ltd., 8 Faieas Street, Agios Athanasios Industrial Area, CY–4101, Limassol, Cyprus

Hochicki America Corporation, 7051 Village Drive, Buena Park, CA 90621

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 26, 2024.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2024–06786 Filed 3–29–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1200 (Second Review)]

Large Residential Washers From Mexico; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on large residential washers (''LRWs'') from Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 1, 2024. To be assured of consideration, the deadline for responses is May 1, 2024. Comments on the adequacy of responses may be filed with the Commission by June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On February 15, 2013, the Department of Commerce (''Commerce'') issued antidumping duty orders covering LRWs from Korea and Mexico and a countervailing duty order covering LRWs from Korea (78 FR 11148 and 78 FR 11154, February 15, 2013). Following the five-year reviews by Commerce and the Commission, effective February 15, 2018, Commerce revoked the antidumping and countervailing duty orders on imports of LRWs from Korea (84 FR 19764, May 6, 2019). Commerce issued a continuation of the antidumping duty order covering LRWs from Mexico, effective May 6, 2019 (84 FR 19764). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full first five-year review determinations, the Commission defined the *Domestic Like Product* as LRWs described by the scope and top load washers with a capacity of less than 3.7 cubic feet.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full first five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of washers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on May 1, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on June 7, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–595, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download

and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in units of washers and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in units of washers and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in units of washers and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to

the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 26, 2024.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2024–06741 Filed 3–29–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact).

DATES: The Council will meet in open session from 8:30 a.m. (CDT) until 5:30 p.m. (CDT) on May 8, 2024.

ADDRESSES: The meeting will take place at the Lincoln Marriott Cornhusker Hotel, 333 South 13th Street, Lincoln, Nebraska 68508.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Chasity S. Anderson, FBI Compact Officer, Biometric Technology Center, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone 304–625–2803.

SUPPLEMENTARY INFORMATION: Thus far, the Federal Government and 35 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, immigration and naturalization matters, and similar noncriminal justice purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from state and federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system for noncriminal justice purposes.

Matters for discussion are expected to include:

(1) Council's Strategic Plan Update

(2) Modernization of the *CJIS Security Policy*

(3) Reuse of Noncriminal Justice Fingerprints for Noncriminal Justice Purposes

The meeting will be conducted with a blended participation option. The meeting will be open to the public on a first-come, first-serve basis. Virtual participation options are available. To register for participation, individuals must provide their name, city, state, phone, email address and agency/organization to *compactoffice@fbi.gov* by April 13, 2024. Individuals registering for participation must note their preference of in-person or virtual participation. Information regarding virtual participation will be provided prior to the meeting to registered individuals attending virtually.

Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify the FBI Compact Officer, Ms. Chasity S. Anderson at *compactoffice@fbi.gov,* at least 7 days prior to the start of the session. The notification should contain the individual's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Individuals will ordinarily be allowed up to 15 minutes to present a topic. The Compact Officer will compile all requests and submit to the Compact Council for consideration.

Individuals requiring special accommodations should contact Ms. Anderson at *compactoffice@fbi.gov* by no later than April 24, 2024. Please note all personal registration information may be made publicly available through a Freedom of Information Act request.

Chasity S. Anderson,

FBI Compact Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2024–06848 Filed 3–29–24; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Call for Proposals To Establish a Partnership in the State of Iowa

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) requests proposals from interested nonprofit organizations and institutions of higher education to partner with NEH as the designated state humanities council in Iowa. Specifically, NEH is interested in partnering with a nonprofit organization or institution of higher education that has the skills and capacity to plan and administer humanities subawards and programs and provide humanities resources that are accessible to the people of the State of Iowa.

DATES: All proposals must be received by July 31, 2024.

ADDRESSES: Submit proposals electronically, with the subject line, ''Opportunity to Enter into a Partnership with the National Endowment for the Humanities as the Designated Humanities Council in the State of Iowa,'' by email at the following address: *fedstatecfp@neh.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Kenton, Director, Office of Federal/State Partnership, 400 Seventh Street SW, Washington, DC 20024. Phone: 202.606.8254. Email: *kkenton@neh.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the President's Executive Order on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* E.O. 13985 of Jan 20, 2021, NEH encourages all eligible organizations to apply who meet the listed qualifications and requirements in this notice, including those that serve, represent, or are led by underserved communities, such as Black, Latino,

Indigenous and Native American, 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 and the organizations that support these individuals and groups.

NEH is an independent Federal agency in the executive branch. NEH's enabling legislation authorizes the agency to ''establish and carry out a program of grants-in-aid in each of the several states''—the term ''states'' defined as including all states and jurisdictions of the U.S.—in order to advance the humanities. (20 U.S.C. 956(f)).

By statute, each year, NEH's designated humanities councils apply for a General Operating Support Grant using the following Notice of Funding Opportunity: State and Jurisdictional Humanities Councils General Operating Support Grants (*neh.gov*). Awards are subject to 2 CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and the General Terms and Conditions for General Support Grants to State Humanities Councils. These General Operating Support Grants are subject to a 1:1 cost-share requirement. (20 U.S.C. 956(f)).

The selected entity will be invited to apply for a fiscal year 2025 General Operating Support Grant for the State of Iowa.

NEH-funded humanities councils ensure access to humanities subawards, programs, and resources in every U.S. state and jurisdiction. Activities conducted by a designated state humanities council may include: (1) grantmaking, (2) developing and implementing council-led public humanities programs, (3) working with humanities scholars, experts, and/or practitioners, (4) partnering with other local, state, jurisdictional, and national organizations, (5) ensuring humanities resources remain accessible to the people of the council's state or jurisdiction, (6) fundraising to meet the required 1:1 match and support the sustainability of programs and operations, (7) actively participating with the network of other state and jurisdictional humanities councils—all in support of advancing the council's and NEH's mission.

Under section 3(a) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, ''The term 'humanities' includes, but is not limited to, the study of the following: language, both modern and classical; linguistics; literature; history; jurisprudence; philosophy; archaeology; comparative religion; ethics; the history, criticism and theory of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to reflecting our diverse heritage, traditions, and history and to the relevance of the humanities to the current conditions of national life.''

II. General Scope

Only nonprofit organizations and institutions of higher education are eligible to submit a proposal. Eligible entities must be incorporated to serve the State of Iowa. To be eligible, your organization must make substantive contributions to the success of the project and must not function solely as a fiscal agent for another entity. Individuals and other organizations, including foreign and for-profit entities, are ineligible.

The entity that is selected pursuant to this notice will be eligible to submit proposals for general operating support funding on an annual basis using the following Notice of Funding Opportunity: State and Jurisdictional Humanities Councils General Operating Support Grants (*neh.gov*).

III. Requested Response

NEH seeks to partner with one nonprofit organization or institution of higher education to establish a humanities council in the State of Iowa.

a. Proposal Submission

All submissions must be made in electronic format and submitted in accordance with the **ADDRESSES** section above.

Unless otherwise stipulated in specific instructions, attachments should conform to the following formatting requirements: (1) maximum 30 pages, exclusive of Appendices/Supplementary Materials, (2) paper size no larger than standard letter paper size (8½″ x 11″), (3) at least one-inch margins on all sides for all pages, (4) a font size no smaller than 11-point, (5) single-spacing, (6) recommended fonts: Arial, Georgia, Helvetica, or Times New Roman, (7) any standard citation style is acceptable; citations are included in page counts.

All proposals are subject to the False Claims Amendments Act of 1986, 31 U.S.C. 3729 and 18 U.S.C. 287, as well as the False Statements Accountability Act of 1996, 18 U.S.C 1001. In accordance with Federal appropriations law, an authorized representative of the selected proposer(s) may be required to provide certain certifications regarding Federal felony and Federal criminal tax convictions, unpaid Federal tax assessments, and delinquent Federal tax returns.

b. Proposal Narrative Guidance

The proposal must address each prompt below and should include information presented in a manner sufficient to allow each response to be reviewed against the evaluation criteria set forth in part ''IV, d—Evaluation Criteria.'' Please use each heading as a title to organize each section of the proposal.

Executive Summary/Capability Statement (1 Page)

- Describe the nature and scope of the organization's humanities expertise; its capacity to steward Federal funds, serve as NEH's designated humanities council, and reach cultural entities and audiences throughout the State of Iowa; and its experience successfully conducting public humanities programming and grantmaking.

Proposal Narrative

1. The Significance of the Humanities in the Work of the Organization (1–2 Pages)

- *Positioning:* Discuss the organization's position within Iowa with respect to cultural institutions, colleges and universities, academic and public humanities, philanthropic organizations, K–12 educators, and the state government and its elected officials.
- *Significance:* Discuss the significance and impact of the organization's public humanities programing and grantmaking in the State of Iowa.

2. The Context and Work of the Organization (2–5 Pages)

- *Public awareness:* Discuss the cultural sector's and public's awareness of the work of the organization—what is the organization best known for, which programs and offerings are the most popular, and how does the public interact with the organization?
- *Leadership:* How will the organization serve as a facilitator, convener, and trusted partner in the Iowa cultural community?
- *Defining the humanities:* How will the organization define the humanities to the public, particularly those audiences that may not be familiar with the humanities?
- *Scholarship and scholars:* How will the organization ground its public

programming and/or grantmaking in humanities scholarship? What role will scholars play in the design, implementation, and evaluation of programming and/or grantmaking?

- *Audiences:* What primary audiences will the organization serve?
- *Partners:* Discuss how the organization will leverage partnerships to enhance the accessibility, reach, and quality of humanities programming and grantmaking. Include the names and roles of potential partners.
- *Communication and Visibility:* How will the organization communicate with the public about its humanities programming and/or grantmaking? How will the organization promote itself as a humanities funder and programmer?
- *Evaluation:* Discuss how the organization will leverage data to inform humanities programming, grantmaking, and internal operations.
- *Advocacy:* NEH strictly prohibits grantees from using the Federal funds it provides for advocacy; humanities councils may not use NEH funds to promote a particular political, religious, or ideological point of view, and must avoid advocacy of a particular program of social or political action. Discuss how, if selected, the organization will actively ensure that NEH funding is not used for advocacy? How will the organization review programs funded by NEH to ensure that its programs and its subrecipients' programs do not engage in advocacy? How often will these reviews occur? If an allegation of improper political advocacy in an NEH-funded program were to be brought to your attention, please explain how you would investigate and resolve the matter.

3. Proposed Humanities Programs (2–4 Pages)

Describe the humanities programs, grants, and other activities the organization proposes to undertake if selected as the designated humanities council in the State of Iowa. Will any of the organizations' existing programs and grants continue?

- Please provide a list with short (no more than 1 paragraph) descriptions of the programs and grants currently available.

4. The Quality of Operations (2–5 Pages)

- *Strategic Planning:*
  - Discuss the organization's mission statement and its role in shaping activities and operations.
  - Discuss the organization's approach to strategic planning, including who is involved in planning discussions, and the frequency of new plans and/or updates.
- *Organizational management:*
  - How does the organization set budgetary priorities? How will the organization plan for and manage risks and liabilities? How does the organization guarantee transparency and accountability of its activities?
  - NEH strongly encourages all humanities councils to pursue diversified funding streams to create stability and reduce risk. Discuss annual goals for fundraising and the organization's current fundraising strategy. Does the organization manage its own fundraising activities, or does it outsource its fundraising activities? Explain how the organization will raise the 1:1 match [1] required by NEH (please base the response on receiving an annual grant of $999,777,[2] the FY2023 amount allocated to the State of Iowa).
  - Does the organization conduct regular financial audits? If so, provide the length of service by the current audit firm and frequency in rotating auditors and/or firms. Were there any findings in the most recent audit? If so, please describe.
  - How does the organization prioritize staff resources? What professional development opportunities exist for staff? How are staff evaluated and how is compensation determined?
  - Are succession plans in place for the executive director, senior staff, and board leadership?
- *Board Governance:* Discuss the role of the board in the following:
  - Setting organizational priorities
  - Determining grants and/or programming
  - Overseeing the executive director
  - Working with the staff
  - Fundraising
  - Outreach
  - Communications
  - Evaluation

5. Public Meetings (1–3 Pages)

During the application period, the prospective partner is required to hold, after reasonable notice, at least one public meeting in the State of Iowa to allow scholars, interested organizations, and the public to present views and make recommendations regarding the organization's proposal. This meeting may be held virtually. The applicant must provide public access to, at minimum, a copy of the Executive Summary and the Work Plan. The application must include a summary of the public recommendations and the organization's response to them. (Required by statute (20 U.S.C. 956(f))

6. Three Year Work Plan and Goals (3–5 Pages)

Provide a year-by-year outline of a proposed work plan and goals during the initial three-year period of performance as the selected humanities council partner, outlining the following:

- The steps to be taken to develop, implement, and evaluate humanities programming and grantmaking.
  - As appropriate, identify meetings and/or opportunities for collaboration with key stakeholders during the planning, implementation, and evaluation processes.
- The sequence in which these steps will occur, the amount of time they will take, and who will be responsible for each task.
- The staff resources required for planning, implementation, and evaluation, including any new staff positions.
- The involvement of the board in planning, implementation, and evaluation. Will there be any changes required to the board structure, committees, or bylaws?
- The organization's plans to meet the required cost-share (1:1) for General Operating Support awards. (Required by statute 20 U.S.C. 956(f))

Appendices/Supplementary Materials

All applications must include:

- Letters of support from any organizational (government or private), program, or grant partner, as well as letters of support from a sampling of up to five individual humanities scholars and advisors, and a signed letter of commitment from the organization's current board of directors.
- Brief résumés (no longer than two pages) for the executive director and the board chair.
- A copy of the organization's current strategic plan.
- A copy of the organization's current bylaws.
- A copy of the organization's organizational chart.
- A copy of the conflict-of-interest statement for the board and staff.
- Statements of compliance with nondiscrimination laws.

[1] By law, the NEH cannot support more than 50 percent of the costs of a state humanities council's activities (20 U.S.C. 956 (f)). The balance of support may come from cash contributions to the council that are made from any source (including funds from other Federal agencies), program income the council has earned, the allowable costs that a subrecipient incurs in carrying out a council-funded project, and the value of in-kind contributions that are made by a third party. Please see General Terms and Conditions for General Support Grants to State Humanities Councils The National Endowment for the Humanities (*neh.gov*) for more information.

[2] This amount is not guaranteed. Allocations to the state and jurisdictional humanities councils are made on an annual basis and based on the amount budgeted to NEH from Congress.

- Staff biographies (no more than 1 paragraph).
- Board biographies (no more than 1 paragraph).
- A copy of the organization's IRS determination letter.
- A copy of the organization's last 3 years of audited financial statements.

IV. Evaluation and Selection Process

All proposals received before the end date set forth in the **DATES** section of this notice will be reviewed to determine whether they are submitted by an eligible organization (section II. General Scope), contain all required proposal information, and are responsive to this notice. Proposals determined to be ineligible, incomplete, and/or non-responsive based on the initial screening by Office of Grant Management and program staff will be eliminated from further review. Applicants will be notified by email if their proposal is deemed ineligible.

All proposals that are determined to be eligible, complete, and responsive will be fully reviewed in accordance with the review and selection process as set forth below.

a. Site Visit

Each proposal deemed eligible for a full review will receive a two-day on-site visit in September 2024 by one NEH staff member and one external reviewer (the site reviewers). The site reviewers will take into consideration the organization's mission, alignment with NEH priorities, expertise in humanities-based grantmaking and programming, statewide position and partnerships, and the quality of operations, financial health, and stability to determine the feasibility of the proposed plan to become NEH's designated partner. Key participants from the applicant organization will include the executive director, staff, board members, and the following constituent groups: grantees (if applicable), scholars/advisors, partners, and funders.

In conjunction with the site visit conducted by the NEH Program Office, the applicant organization will undergo a three-hour virtual site visit with two staff members from the Office of Grant Management (OGM). The OGM site visit aims to assess the applicant organization's capacity to effectively manage an NEH General Operating Support award and provide necessary tools and resources to strengthen oversight. During the site visit, OGM will communicate the NEH's expectations for State Humanities Councils and conduct an objective review to determine if the organization's policies, procedures, internal controls, and financial systems comply with the requirements of 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and the NEH General Terms and Conditions for General Support Grants to State Humanities Councils.

Applicant organizations will be expected to complete a Site Visit Questionnaire that assesses the organization's administrative procedures, financial systems, and internal controls and a Financial Assessment Questionnaire that assesses accounting systems, internal controls, and audit history. Additionally, the organization must have all written policies available. These materials must be submitted to OGM for review one week before the virtual site visit. Key participants from the applicant organization will include the Executive Director, Institutional Grant Administrator (equivalent), and finance staff, as needed.

b. Peer Review

Following the on-site visit, all proposals deemed eligible for a full review will be reviewed, along with the independent reviewer's site visit report, by a panel of at least three peer reviewers. Peer reviewers are experts in the field with relevant knowledge and expertise in the types of activities identified in the proposals. NEH instructs reviewers to evaluate proposals according to the Evaluation Criteria outlined below. Peer reviewers must comply with Federal ethics and conflicts of interest requirements. In addition to information included in your proposal, NEH and the peer reviewers may take into account feedback provided by internal or external site reviewers in the consideration of your proposal. NEH's Application Review Process | The National Endowment for the Humanities.

c. National Council on the Humanities Review

NEH staff comment on matters of fact or on significant issues that otherwise would be missing from peer reviews, then make recommendations to the National Council on the Humanities. The National Council meets at least thrice annually to advise the NEH Chair. The Chair considers the advice provided by the review process and, by law, makes all funding decisions.

d. Evaluation Criteria

1. The Significance of the Humanities in the Work the Organization

- In what ways are the organization's current programs, grants, and other activities significant or impactful for the advancement of the humanities in the State of Iowa?

2. The Context and Work of the Organization

- Does the organization have appropriate relationships with state/local government officials, cultural institutions, colleges and universities, academic and public humanists, and philanthropic organizations?
- Does the organization have an appropriate level of visibility throughout the state? Does the proposal adequately outline plans to communicate with the general public about the work of a humanities council (programs, grants, etc.)?
- Who are the identified audiences served, and how will they benefit from the outcomes of the partnership (humanities council) over the long term?
- Are appropriate partners in place to enhance the accessibility, reach, and quality of the proposed programs and/or grantmaking?
- Given that NEH requires humanities councils to actively engage humanities scholars and practitioners in program development, program implementation, and evaluation, does the proposal show that humanities scholars and practitioners are adequately involved in the organization's work?

3. Proposed Humanities Programs

- Does the applicant have a history of offering humanities grants and/or conducting humanities programming?
- Are the current and proposed humanities grants and programs reasonable and achievable?

4. The Quality of Operations

- Is there a strategic plan in place that is reasonable and achievable?
- Is the organizational structure sound? Are there sufficient human and financial resources to meet the goals and requirements for the work of a humanities council? Does the fundraising plan prioritize diversified funding streams? Is there a reasonable plan to meet the required 1:1 cost-share beyond the use of indirect costs?
- Does the level of involvement or engagement of the board follow best practices in board governance? Does the board have appropriate oversight of the organization's operations and finances?

5. Public Meetings

- Has the applicant held at least 1 public meeting?
- Does the proposal include a summary of the public recommendations and the organization's response to them?

6. The Work Plan and Feasibility of the Proposed Methods

- To what extent are the goals and objectives clearly identifiable and achievable?
- Is the timeline appropriate for the work plan and the proposed resources?
- Are the roles and duties of key personnel clear, and are the team members appropriately qualified for the proposed work?
- Do the key personnel and board members represent an appropriate mix of humanities, nonprofit, and community expertise? How strong is the experience of the staff and board in each of these areas?

V. Notification of Results

NEH will notify applicants of the NEH Chair's decision to enter into a partnership in December 2024. This notification is not an authorization to begin performance or incur related costs. No funding is awarded through this call for proposals. The selected partner will be invited to apply for a State and Jurisdictional Humanities Council General Operating Support Grant using the following Notice of Funding Opportunity: State and Jurisdictional Humanities Councils General Operating Support Grants.

Dated: March 27, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024–06811 Filed 3–29–24; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–309 and 72–30; NRC–2024–0020]

Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to the March 31, 2023, request from Maine Yankee Atomic Power Company (MYAPC or Maine Yankee), for the Maine Yankee Atomic Power Station (MYAPS), located in Wiscasset, Maine. The exemption permits MYAPC to make withdrawals from a separate account within Maine Yankee's overall Nuclear Decommissioning Trust (NDT), on an annual basis, for spent nuclear fuel and Greater than Class C (GTCC) waste management and non-radiological site restoration without prior notification to the NRC.

DATES: The exemption was issued on February 29, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0020 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0020. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tilda Liu, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 404–997–4730, email: *Tilda.Liu@nrc.gov*.

SUPPLEMENTARY INFORMATION: By letter dated March 31, 2023, (ADAMS Accession No. ML23113A005), the Maine Yankee Atomic Power Company (MYAPC or Maine Yankee) submitted a request to the NRC for an exemption from sections 50.82(a)(8)(i)(A) and 50.75(h)(2) of title 10 of the *Code of Federal Regulations* (10 CFR) for the Maine Yankee Independent Spent Fuel Storage Installation (ISFSI).[1]

Maine Yankee has established a separate (segregated) account within its over-arching Nuclear Decommissioning Trust (NDT), entitled ''ISFSI Radiological Decom,'' that identifies the funds for radiological decommissioning of the ISFSI apart from the larger balance of funds in the NDT allocated for ongoing management of spent nuclear fuel and Greater than Class C (GTCC) waste and for non-radiological site restoration activities. Although 10 CFR 50.82 applies to the segregated account, it does not apply to the overall NDT.

The exemption from 10 CFR 50.82(a)(8)(i)(A) and 50.75(h)(2) allows MYAPC to make withdrawals from the segregated account, on an annual basis, for spent nuclear fuel and GTCC waste management and non-radiological site restoration without prior notification to the NRC. More specifically, with this exemption, MYAPC can annually transfer funds exceeding 110 percent of the inflation-adjusted Decommissioning Cost Estimate, described in 10 CFR 50.75, from the segregated account to its overarching NDT and use those funds for spent nuclear fuel and GTCC waste management and non-radiological site restoration.

Based on the review, the NRC determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, the NRC determined that special circumstances are present. Therefore, the NRC granted Maine Yankee an exemption from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) to permit MYAPC to make withdrawals from the segregated account, on an annual basis, for spent nuclear fuel and GTCC waste management and non-radiological site restoration without prior notification to the NRC. All other relevant

[1] The Maine Yankee ISFSI sits on the former site of the Maine Yankee Atomic Power Station, which MYAPC finished decommissioning in 2005. Although only the Maine Yankee ISFSI remains on the site, Maine Yankee's 10 CFR part 50 license, Facility Operating License No. DPR–36, remains in effect. Because MYAPC requested an exemption from the requirements of 10 CFR part 50, this would be an exemption for MYAPC's 10 CFR part 50 license rather than for MYAPC's 10 CFR part 72 general license. Therefore, although MYAPC's submission requested an exemption for the Maine Yankee ISFSI, the NRC considers it a request for an exemption for the Maine Yankee Atomic Power Station.

requirements shall be met. On February 29, 2024, the NRC issued an exemption for MYAPC (ADAMS Package Accession No. ML23286A325). The NRC staff also prepared an environmental assessment and finding of no significant impact regarding the proposed exemption request, published in the **Federal Register** on February 28, 2024 (89 FR 14723), and concluded that the proposed exemption would not have a significant impact on the quality of the human environment.

Dated: March 27, 2024.

For the Nuclear Regulatory Commission.

Yoira K. Diaz-Sanabria,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024–06820 Filed 3–29–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–37, 50–237, and 50–249; NRC–2024–0054]

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Unit 2 and Unit 3; Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for an exemption request submitted by Constellation Energy Generation, LLC (Constellation) that would permit Dresden Nuclear Power Station (Dresden) to maintain loaded and to load 68M multi-purpose canister (MPC) with continuous basket shims (CBS) in the HI–STORM 100 Cask System at its Dresden Unit 2 and Unit 3 independent spent fuel storage installation (ISFSI) in a storage condition where the terms, conditions, and specifications in the Certificate of Compliance (CoC) No. 1014, Amendment No. 8, Revision No. 1 are not met.

DATES: The EA and FONSI referenced in this document are available on April 1, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0054 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0054. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1018; email: *Yen-Ju.Chen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is reviewing an exemption request from Constellation, dated February 23, 2024, and supplemented on February 28, 2024, and March 8, 2024. Constellation is requesting an exemption, pursuant to section 72.7 of title 10 of the *Code of Federal Regulations* (10 CFR), in sections 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 that require Constellation to comply with the terms, conditions, and specifications of the CoC No. 1014, Amendment No. 8, Revision No. 1. If approved, the exemption would allow Constellation to maintain loaded and to load MPC–68–CBS in the HI–STORM 100 Cask System at the Dresden ISFSI in a storage condition where the terms, conditions, and specifications in the CoC No. 1014, Amendment No. 8, Revision No. 1, are not met.

II. Environmental Assessment

Background

Dresden is located on the south bank of the Illinois River at the confluence of the Des Plaines and the Kankakee Rivers in Goose Lake Township, Grundy County, near the city of Morris, Illinois. Unit 2 began operating in 1970 and Unit 3 began operating in 1971. Constellation has been storing spent fuel in an ISFSI at Dresden under a general license as authorized by 10 CFR part 72, subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites.'' Constellation currently uses the HI–STORM 100 Cask System under CoC No. 72–1014, Amendment No. 8, Revision No. 1 for dry storage of spent nuclear fuel in a specific MPC (*i.e.,* MPC–68M) at the Dresden ISFSI.

Description of the Proposed Action

The CoC is the NRC approved design for each dry cask storage system. The proposed action would exempt the applicant from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 only as these requirements pertain to the use of the MPC–68–CBS in the HI–STORM 100 Cask System for the already loaded systems and the near-term planned loadings of the systems. The exemption would allow Constellation to maintain loaded and to load MPC–68–CBS in the HI–STORM 100 Cask System at the Dresden ISFSI, despite the MPC–68–CBS in the HI–STORM 100 Cask System not being in compliance with the terms, conditions, and specifications in the CoC No. 1014, Amendment No. 8, Revision No. 1.

The HI–STORM 100 Cask System CoC provides the requirements, conditions, and operating limits necessary for use of the system to store spent fuel. Holtec International (Holtec), the designer and manufacturer of the HI–STORM 100 Cask System, developed a variant of the design with continuous basket shims (CBS) for the MPC–68M, known as MPC–68M–CBS. Holtec originally implemented the CBS variant design under the provisions of 10 CFR 72.48, which allows licensees to make changes to cask designs without a CoC amendment under certain conditions (listed in 10 CFR 72.48(c)). After evaluating the specific changes to the cask designs, the NRC determined that Holtec erred when it implemented the CBS variant design under 10 CFR 72.48, as this was not the type of change allowed without a CoC amendment. For this reason, the NRC issued three Severity Level IV violations to Holtec. Prior to the issuance of the violations, Constellation had already loaded four

MPC–68M–CBS in a HI–STORM 100 Cask System, which are safely in storage on the Dresden ISFSI pad. Additionally, Constellation plans to load one MPC–68M–CBS in the HI–STORM 100 Cask System in May 2024 and four MPC–68M–CBS in March 2025. This exemption considers the loading of the already loaded systems and the near-term planned loadings of the systems with the CBS variant basket design.

Need for the Proposed Action

Constellation requested this exemption because Constellation is currently out of compliance with NRC requirements, resulting from the previous loading of spent fuel into a storage system with the CBS variant basket design. This exemption would allow four already loaded MPC–68M–CBS in the HI–STORM 100 Cask System to remain in storage at the Dresden ISFSI. The applicant also requested the exemption in order to allow Dresden to load MPC–68M–CBS in HI–STORM 100 Cask System at the Dresden ISFSI for the future loading campaigns scheduled in May 2024 and in March 2025.

Approval of the exemption request would allow Constellation to effectively manage the spent fuel pool margin and capacity to enable refueling and offloading fuel from the reactor. It would also allow Constellation to effectively manage the availability of the specialized workforce and equipment needed to support competing fuel loading and operational activities at Dresden and other Constellation sites.

Environmental Impacts of the Proposed Action

This EA evaluates the potential environmental impacts of granting an exemption from the terms, conditions, and specifications in CoC No. 1014, Amendment No. 8, Revision No. 1. The exemption would allow four loaded MPC–68M–CBS in the HI–STORM 100 Cask System to remain loaded at the Dresden ISFSI. The exemption also would allow five additional MPC–68M–CBS to be loaded in the HI–STORM 100 Cask System in near-term loading campaigns and maintained in storage at the Dresden ISFSI.

The potential environmental impacts of storing spent nuclear fuel in NRC-approved storage systems have been documented in previous assessments. On July 18, 1990 (55 FR 29181), the NRC amended 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The EA for the 1990 final rule analyzed the potential environmental impacts of using NRC-approved storage casks. The EA for the HI–STORM 100 Cask System, CoC No. 1014, Amendment No. 8, Revision No. 1, (80 FR 49887), published in 2015, tiers off of the EA issued for the July 18, 1990, final rule. ''Tiering'' off earlier EAs is a standard process encouraged by the regulations implementing the National Environmental Policy Act of 1969 (NEPA) that entails the use of impact analyses of previous EAs to bound the impacts of a proposed action where appropriate. The Holtec HI–STORM 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Considering the specific design requirements for the accident conditions, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would not be significant.

The exemptions requested by Constellation at the Dresden site as they relate to CoC No. 1014, Amendment No. 8, Revision No. 1, for the HI–STORM 100 Cask System are limited to the use of the CBS variant basket design only for the already loaded four systems and near-term planned loadings of five systems utilizing the CBS variant basket design. The staff has determined that this change in the basket will not result in either radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the issuance of CoC No. 1014, Amendment No. 8, Revision No. 1. If the exemption is granted, there will be no significant change in the types or amounts of any effluents released, no significant increase in individual or cumulative public or occupational radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. Accordingly, the Commission concludes that there would be no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

The staff considered the no-action alternative. The no-action alternative (denial of the exemption request) would require Constellation to unload spent fuel from the MPC–68M–CBS in the HI–STORM 100 Cask System to bring it in compliance with the CoC terms, conditions, and specifications in the CoC No. 1014, Amendment No. 8, Revision No. 1. Unloading the cask would subject station personnel to additional radiation exposure, generate additional contaminated waste, increase the risk of a possible fuel handling accident, and increase the risk of a possible heavy load handling accident. Furthermore, the removed spent fuel would need to be placed in the spent fuel pool, where it would remain until it could be loaded into an approved storage cask. Delay in the loading of this spent fuel into other casks could affect Constellation's ability to effectively manage the spent fuel pool capacity and reactor fuel offloading. Not allowing the two planned future loading campaigns could also affect Constellation's ability to manage pool capacity, reactor fuel offloading, and refueling. It could also pose challenges to spent fuel heat removal and impact the availability of the specialized workforce and equipment needed to support competing fuel loading and operational activities at Dresden and other Constellation sites. The NRC has determined that the no-action alternative would result in undue potential human health and safety impacts that could be avoided by proceeding with the proposed exemption, especially given that the staff has concluded in NRC's Safety Determination Memorandum, issued with respect to the enforcement action against Holtec regarding these violations, that fuel can be stored safety in the MPC–68M–CBS casks.

Agencies Consulted

The NRC provided the Illinois Emergency Management Agency and Office of Homeland Security (IL IEMA–OHS) a copy of this draft EA for review by an email dated March 15, 2024. On March 22, 2024, IL–IEMA–OHS provided its concurrence by email.

III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements in 10 CFR part 51, which implement NEPA. Based upon the foregoing environmental assessment, the NRC finds that the proposed action of granting the exemption from the regulations in 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11) and 72.214, which require the licensee to comply with the terms, conditions, and specifications of the CoC, in this case limited to past and specific future loadings of baskets with the CBS variant design, would not significantly impact the quality of the human environment. Accordingly, the NRC has determined that a finding of no significant impact (FONSI) is appropriate, and an environmental impact statement is not warranted.

IV. Availability of Documents

The documents identified in the following table are available to

interested persons through ADAMS, as indicated.

Document description	ADAMS accession No. or **Federal Register** notice
Constellation's request for exemption, dated February 23, 2024	ML24054A031.
Supplements to request for exemption, dated February 28, 2024, and March 8, 2024	ML24065A292. ML24068A069.
Certificate of Compliance No. 1014, Amendment 8, Revision 1, dated February 10, 2016	ML16041A233 (Package).
Notice of Violation to Holtec International, Inc., The U.S. Nuclear Regulatory Commission Inspection Report No. 07201014/2022–201, EA–23–044, dated January 30, 2024.	ML24016A190.
10 CFR part 72 amendment to allow spent fuel storage in NRC-approved casks, dated July 18, 1990	55 FR 29181.
EA for part 72 amendment to allow spent fuel storage in NRC-approved casks, dated March 8, 1989	ML051230231.
Final rule for List of Approved Spent Fuel Storage Casks: HI–STORM 100 Cask System, CoC No. 1014, Amendment 8, Revision 1, dated August 18, 2015.	80 FR 49887.
Safety Determination of a Potential Structural Failure of the Fuel Basket During Accident Conditions for the HI–STORM 100 and HI–STORM Flood/Wind Dry Cask Storage Systems, dated January 31, 2024.	ML24018A085.
NRC email to IL IEMA–OHS, ''Request: State review of the Dresden exemption request environmental assessment,'' dated March 15, 2024.	ML24078A377.
IL IEMA–OHS email response, ''IEMA–OHS review of Draft Environmental Assessment and Finding of No Significant Impact Related to Constellation's Exemption Request for Dresden Nuclear Power Station, Units 2 and 3, from Certain Requirements in 10 CFR 72.212 and 10 CFR 72.214,'' dated March 22, 2024.	ML24083A002.

Dated: March 26, 2024.

For the Nuclear Regulatory Commission.

Yoira K. Diaz-Sanabria,

Chief, Storage and Transportation Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024–06772 Filed 3–29–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–214 and CP2024–220; MC2024–215 and CP2024–221; MC2024–216 and CP2024–222]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 3, 2024.

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

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–214 and CP2024–220; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 206 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 3, 2024.

2. *Docket No(s).:* MC2024–215 and CP2024–221; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 207 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 3, 2024.

3. *Docket No(s).:* MC2024–216 and CP2024–221; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 208 to Competitive

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* April 3, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–06814 Filed 3–29–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, April 4, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Resolution of litigation claims; and
Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 28, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–06961 Filed 3–28–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99859; File No. SR–OPRA–2023–01]

Joint Industry Plan; Withdrawal of Proposed Amendment To Modify the Options Price Reporting Authority's Fee Schedule Regarding Caps on Certain Port Fees

March 26, 2024.

On July 14, 2023, the Options Price Reporting Authority (''OPRA''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 of Regulation National Market System (''Regulation NMS'') thereunder,[2] filed with the Securities and Exchange Commission (''Commission''), a proposed amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed OPRA Plan amendment (''Proposed Amendment'') would have amended the OPRA Fee Schedule to reflect the applicable monthly fee caps on certain connectivity ports that are used to access OPRA data. The Proposed Amendment was published for comment in the **Federal Register** on August 2, 2023.[4]

On September 25, 2023, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS [5] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate.[6] On January 25, 2024, the Commission designated a longer period within which to conclude proceedings regarding the Proposed Amendment and designated March 29, 2024, as the date by which the Commission would conclude the proceedings.[7]

The Commission is publishing this notice to reflect that, on March 21, 2024, OPRA withdrew the Proposed Amendment.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06779 Filed 3–29–24; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981), 22 SEC. Docket 484 (Mar. 31, 1981). The full text of the OPRA Plan and a list of its participants are available at *https://www.opraplan.com/*. The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges.

[4] *See* Securities Exchange Act Release No. 98012 (July 27, 2023), 88 FR 50939 (Aug. 2, 2023).

[5] 17 CFR 242.608(b)(2)(i).

[6] *See* Securities Exchange Act Release No. 98514 (Sept. 25, 2023), 88 FR 67398 (Sept. 29, 2023).

[7] *See* Securities Exchange Act Release No. 99431 (Jan. 25, 2024), 89 FR 6160 (Jan. 31, 2024).

[8] 17 CFR 200.30–3(a)(85).

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #20239; Michigan Disaster Number MI–20012 Declaration of Economic Injury Administrative Declaration of an Economic Injury Disaster for the State of Michigan

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 Michigan dated 03/26/2024.

Incident: Severe Drought.

Incident Period: 02/20/2024 and continuing.

DATES: Issued on 03/26/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/26/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, 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 disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@*

sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Ontonagon.
Contiguous Counties:
Michigan: Gogebic, Houghton, Iron.
The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 202390.

The State which received an EIDL Declaration is Michigan.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–06785 Filed 3–29–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12366]

Notice of Department of State Sanctions Actions

ACTION: Notice of designation.

SUMMARY: Pursuant to the authority in the Executive Order, ''Blocking Property of Certain Persons with Respect to the Conventional Arms Activities of Iran,'' and delegated authority, the Under Secretary of State for Arms Control and International Security, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Iran Aircraft Manufacturing Industrial Company, Islamic Republic of Iran Air Force, Rosoboroneksport OAO, 924th State Center for UAV Aviation, Russian Aerospace Forces, and the Command of the Military Transport Aviation engage in activity that materially contributes to the supply, sale, or transfer, directly or indirectly, to or from Iran, or for the use in or benefit of Iran, of arms or related materiel, including spare parts. Additionally, pursuant to the authority in the Executive Order, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,'' and delegated authority, the Under Secretary of State for Arms Control and International Security, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Amir Radfar and Vahid Soleimani, engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by Iran, a country of proliferation concern. The entities and individuals above have been added to the List of Specially Designated Nationals and Blocked Persons (SDN List) maintained by the Department of the Treasury's Office of Foreign Assets Control (OFAC).

DATES: The Under Secretary for Arms Control and International Security made these designations pursuant to E.O. 13949 and E.O. 13382 and delegated authorities, on October 16, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Zarzecki, Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's website at *http://www.treasury.gov/ofac.*

Notice of Department of State Actions

On September 21, 2020, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13949 (the ''Order''), effective on September 21, 2020. In the Order the President took additional steps with respect to the national emergency declared in Executive Order (E.O.) 12957 of March 15, 1995 to counter Iran's malign influence in the Middle East, including transfers from Iran of destabilizing conventional weapons and acquisition of arms and related materiel by Iran.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: (i) any person determined by the Secretary of State, in consultation with the Secretary of the Treasury, to engage in any activity that materially contributes to the supply, sale, or transfer, directly or indirectly, to or from Iran, or for the use in or benefit of Iran, of arms or related materiel, including spare parts; (ii) any person determined by the Secretary of State, in consultation with the Secretary of the Treasury, to provide to Iran any technical training, financial resources or services, advice, other services, or assistance related to the supply, sale, transfer, manufacture, maintenance, or use of arms and related materiel described in subsection (a)(i) of this section; (iii) any person determined by the Secretary of State, in consultation with the Secretary of the Treasury, to have engaged, or attempted to engage, in any activity that materially contributes to, or poses a risk of materially contributing to, the proliferation of arms or related materiel or items intended for military end-uses or military end-users, including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items, by the Government of Iran (including persons owned or controlled by, or acting for or on behalf of the Government of Iran) or paramilitary organizations financially or militarily supported by the Government of Iran; (iv) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or (v) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 CFR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or

hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery, including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

As a result of this action, all property and interests in property of Iran Aircraft Manufacturing Industrial Company, Islamic Republic of Iran Air Force, Rosoboroneksport OAO, 924th State Center for UAV Aviation, Russian Aerospace Forces, Command of the Military Transport Aviation, Amir Radfar, and Vahid Soleimani that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Identifying information on the designees is as follows:

The Department of State has designated the following six entities pursuant to E.O. 13949 Section l(a)(i) for materially contributing to the supply, sale, or transfer, directly or indirectly, to or from Iran, or for the use in or benefit of Iran, of arms or related materiel, including spare parts.:

IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY (a.k.a.: ''HESA''; a.k.a.: HESA TRADE CENTER; a.k.a.: ''HTC''; a.k.a.: IRAN AIRCRAFT MANUFACTURING INDUSTRIES; a.k.a.: ''IAMI''; a.k.a.: IRAN AIRCRAFT MANUFACTURING COMPANY; a.k.a.: ''IAMCO''; a.k.a.: KARKHANEJATE SANAYE HAVAPAYMAIE IRAN; a.k.a.: ''HAVA PEYMA SAZI–E IRAN''; a.k.a.: ''HAVAPEYMA SAZI IRAN''; a.k.a.: ''HAVAPEYMA SAZHRAN''; a.k.a.: ''HEVAPEIMASAZI''; a.k.a.: ''SHAHIN CO.''), P.O. Box 83145–311, 28 km Esfahan—Tehran Freeway, Shahin Shahr, Esfahan, Iran; P.O. Box 14155–5568, No. 27, Shahamat Ave, Vallie Asr Sqr, Tehran, 15946, Iran; P.O. Box 81465–935, Esfahan, Iran; Shahih Shar Industrial Zone, Esfahan, Iran; P.O. Box 8140, No. 107 Sepahbod Gharany Ave, Tehran, Iran; National ID No. 10100722073 (Iran); Registration Number 26740 (Iran) [IRAN–CON–ARMS–EO].

ISLAMIC REPUBLIC OF IRAN AIR FORCE (a.k.a.: ''IRIAF''; a.k.a.: ''NAHAJA''), Doshan Tappeh Air Base, Tehran, Tehran Province, Iran; Target Type: Government Entity; website *https://nahaja.aja.ir* [IRAN–CON–ARMS–EO].

ROSOBORONEKSPORT OAO (a.k.a.: RUSSIAN DEFENSE EXPORT ROSOBORONEXPORT; a.k.a.: ROSOBORONEXPORT JSC; a.k.a.: ROSOBORONEKSPORT OJSC), 27 STROMYNKA UL. MOSCOW, POSTAL CODE 107076, RUSSIA; Registration Number 1117746521452 (Russia); Government Gazette Number 56467052 (Russia); Tax ID No. 7718852163 (Russia) [IRAN–CON–ARMS–EO].

924th STATE CENTER FOR UAV AVIATION (a.k.a.: ''924 GTsBA''; a.k.a.: Federalnoe Kazennoe Uchrezhdenie Voiskovaia Chast 20924; a.k.a.: Federal State Institution Military Unit 20924), 5 proezd Artilleristov, Kolomna, Moscow Oblast, 140415, Russia; Tax ID No. 5022050639 (Russia); Registration Number. 1165022050808 (Russia); Organization Established Date 2013; Target Type: Government Entity [IRAN–CON–ARMS–EO].

RUSSIAN AEROSPACE FORCES (a.k.a.: ''VKS''), Kolymazhnyy Pereulok 14, Moscow, Russia; Target Type: Government Entity; Organization Established Date August 01, 2015 [IRAN–CON–ARMS–EO].

COMMAND OF THE MILITARY TRANSPORT AVIATION (a.k.a.: ''Military Transport Aviation; a.k.a.: ''VTA Command''; a.k.a.: ''VTA''; a.k.a.: Federalnoe Kazennoe Uchrezhdenie Voiskovaia Chast 25969; a.k.a.: Federal State Institution Military Unit 25969; International a.k.a.: Военно-транспортная Авиация (Cyrillic); a.k.a.: BTA (Cyrillic)), ul. Matrosskaia Tishina, 10, Moscow, 107014, Russia; Tax ID No. 7718786880 (Russia); Registration Number 1097746767821 (Russia); Target Type: Government Entity; Established Date June 01, 1931 [IRAN–CON–ARMS–EO].

The Department of State has designated the following two Iranian individuals pursuant to E.O. 13382 Section l(a)(ii) for engaging, or attempting to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transfer or use such items, by Iran:

RADFAR, Amir, Iran; DOB 22 Dec 1971; nationality Iran; Gender Male [NPWMD].

SOLEIMANI, Vahid, Iran; DOB 6 Dec 1968; nationality Iran; Gender Male [NPWMD].

The entities and individuals above have been added to the List of Specially Designated Nationals and Blocked Persons.

Gonzalo O. Suarez,

Deputy Assistant Secretary, International Security and Nonproliferation, Department of State.

[FR Doc. 2024–06790 Filed 3–29–24; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2024–1029]

Notice of Funding Opportunity for FAA's Office of Airports FY 2023 Supplemental Discretionary Grants

AGENCY: Federal Aviation Administration, Office of Airports, U.S. Department of Transportation.

ACTION: Notice of funding opportunity.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Aviation Administration (FAA) announces the opportunity to apply for approximately $269 million in FY 2023 Supplemental Discretionary Grants. This is a competitive grant program under the project grant authority for Airport Improvement Program (AIP). The AIP objective is to assist airport owners and operators (sponsors) that are eligible to accept grants in the development and improvement of a nationwide airport system. FAA will implement the FY 2023 Supplemental Discretionary grants consistent with AIP sponsor and project eligibility. In addition, FY 2023 Supplemental Discretionary grants will

align with DOT's Strategic Framework FY 2022–2026 at *https://www.transportation.gov/administrations/office-policy/fy2022-2026-strategic-framework.*

DATES: Airport sponsors must submit an application that meets the requirements of this NOFO no later than 5:00 p.m. Eastern time, May 2, 2024.

ADDRESSES: Submit applications electronically at *9-ARP-AIPSupp@FAA.gov.*

FOR FURTHER INFORMATION CONTACT: David F. Cushing, Manager, Airports Financial Assistance Division, APP–500 at (202) 267–8827.

SUPPLEMENTARY INFORMATION:

A. Program Description

This FY 2023 Supplemental Discretionary Grants Notice of Funding Opportunity (NOFO) announces a competitive grant program that falls under the project grant authority for the AIP in 49 U.S.C. 47104. The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) (Appropriations Act), provides funding, to remain available through September 30, 2025, for the Secretary of Transportation to issue grants for projects as authorized by subchapter 1 of chapter 471 and subchapter 1 of chapter 475 of title 49 of the U.S.C., for both specific Congressionally Directed grants that are not subject to this NOFO, and approximately $269 million in FY2023 Supplemental Discretionary Grants, subject to the availability of funds, that are the subject of this NOFO. As outlined in 2 Code of Federal Regulations (CFR) part 200—*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,* the AIP Federal Assistance Listings number is 20.106.

FAA seeks to fund projects that advance the Departmental priorities of safety, equity, climate and sustainability, and workforce development, job quality, and wealth creation as described in Section E and the 2022–2026 USDOT Strategic Plan, in the 2022–2026 USDOT Research, Development and Technology Strategic Plan, and in executive orders, including those listed under Section F.2.

B. Federal Award Information

B.1 Total Funding

This NOFO announces approximately $268,707,225, subject to the availability of funds, for FY 2023 Supplemental Discretionary Grants to remain available through September 30, 2025. Of this total, $235,677,112 will be made available to medium and large hub airports and $33,030,113 to small hub, nonhub, and nonprimary airports.

B.2 Expected Award Amount

From FY 2018 through FY 2022, more than 625 supplemental discretionary grants were awarded, totaling approximately $2.5 billion. The supplemental discretionary grants ranged in amount from $142,000 to $29,115,000. The average supplemental discretionary grant has been approximately $4,800,000.

Large and Medium Hub Airports: In FY 2022, 34 awards, averaging $5.8 million were awarded to large and medium hub airports. In FY 2023, the total amount available for this category is $235,677,112 million. Applicants should craft project applications to accept grants to fulfill a useful unit of work that achieve a priority purpose, or purposes, expressed in Sections A and E of no more than $20 million federal share.

Small Hub, Nonhub, and Nonprimary Airports: In FY 2022, 45 awards, averaging $1.5 million were awarded to small hub, nonhub, and nonprimary airports. For FY2023, the total amount available for this category is $33,030,113. Applicants should craft project applications to accept grants to fulfill a useful unit of work that achieve a priority purpose, or purposes expressed in Sections A and E of no more than $1.5 million federal share.

In consideration of the limited funding, project applications should consider projects that may have multiple useful units of work scoped with bid alternates.

B.3 Number of Awards

FAA anticipates at least 50 awards to be made from this NOFO.

B.4 Expected Award Funding and Anticipated Dates

Anticipated Award Date: within 90 days after the application deadline.

Anticipated Funding/Obligation Dates: July 2024 through May 2025.

B.5 Period of Performance

The period of performance shall not extend beyond four (4) years after the applicable Anticipated Award/Obligation Dates from Section B.4.

B.6 Partial Awards

FAA reserves the right to fund an application at less than the total amount requested to cover only a portion of the proposed activity indicated in the original proposal, as long as the activity is a useful unit of work. However, a partial award does not guarantee future funding for completion of all activities within the project. If project proposals are offered as a non-severable package of work, the applicant should specify this in the application. Applicants are encouraged to propose projects that are scalable and identify scaled funding options in case insufficient funding is available to fund an applicant's project or a bundled project at the full requested amount.

C. Eligibility Information

C.1 Eligible Applicants

Eligible applicants are public agencies owning or leasing a public-use airport in the NPIAS; private entities owning a public-use NPIAS airport; States acting as a sponsor for one or more specific NPIAS airports in the State; Indian Tribes or pueblos owning or leasing a public-use NPIAS airport; the Secretary of the Interior for Midway Island Airport; the Republic of the Marshall Islands; the Federated States of Micronesia; the Republic of Palau; and other applicants as outlined in table 2–1 of the AIP Handbook, FAA Order 5100.38, February 26, 2019 available at: *https://www.faa.gov/airports/aip/aip_handbook/.*

C.2 Cost Sharing and Matching

Grants have Federal shares ranging from 70 percent to 95 percent under 49 U.S.C. 47109. The Federal share percentage is based on the airport size and type of project. Federal share by airport and project type can be found in chapter 4 of the AIP Handbook, FAA Order 5100.38D, February 26, 2019.

C.3 Project Eligibility

Every applicant must be able to demonstrate that its proposed project is able to meet all grant requirements, including appropriate procurement of services such as construction bids, and be able to execute a grant no later than May 31, 2025.

Subject to funding availability, FAA will consider applications for AIP-eligible projects under the Priority Project Categories in section (C.3.a). Funding for projects under the general AIP eligibility will be considered after funding decisions for the Priority Projects Categories have been determined.

However, funds are limited, especially with regard to small hub, nonhub, and nonprimary airports.

C.3.a Priority Project Categories

The Appropriations Act focuses on specific areas of AIP eligibility consistent with Administration priorities. These are airfield operational resiliency (AOR); sustainable aviation

fuel (SAF); and emissions and energy improvements (EE).

C.3.a.1 Airfield Operational Resiliency (AOR)

Airfield operational resiliency and the safety of airfield operations are high priorities for FAA and the Department. Projects to improve the resiliency of at-risk infrastructure must preserve or advance airfield safety standards or advance the safety of airfield operations. Projects that advance the operational resiliency of the airfield, necessarily strive to do so under safe operating conditions. The Appropriations Act focuses on airfield operational resiliency, stating that FAA may make supplemental discretionary grants for airport development improvements to primary runways, taxiways, and aprons necessary at primary airports to increase operational resiliency for the purpose of resuming commercial service flight operations following an earthquake, flooding, high water, hurricane, storm surge, tidal wave, tornado, tsunami, wind-driven water, or winter storms.

AIP traditionally focuses on airfield resiliency including safe operations in varied operating circumstances. Also, AIP funds airfield resiliency in the form of pavement durability and weight-bearing capacity. Intact airfield pavement is a significant factor in operational safety. Airfield drainage and projects that prevent accumulations of precipitation or inundation of the airfield are eligible projects for AIP funding. Airfield Operational Resiliency also means the resiliency of airfield signage and markings, as well as the reliability and effectiveness of airfield lighting infrastructure.

C.3.a.2 Sustainable Aviation Fuel (SAF)

FAA may make grants to primary airports for airport-owned infrastructure required for the on-airport distribution, blending, or storage of sustainable aviation fuels that achieve at least a 50 percent reduction in lifecycle greenhouse gas emissions, using a methodology determined by the Secretary of Transportation. Projects may include, but are not limited to, on-airport construction or expansion of pipelines, rail lines and spurs, loading and off-loading facilities, blending facilities, and storage tanks.

C.3.a.3 Emissions and Energy (EE)

i. Expanded Emissions Eligibility: As required in the Appropriations Act, FAA has set aside no less than $25 million for grants for work necessary at commercial service airports to construct or modify airport facilities to provide low-emission fuel systems, gate electrification, other related air quality improvements, acquisition of airport-owned vehicles or ground support equipment with low emission technology, or the purchase and installation of chargers to support such airport-owned vehicles and ground support equipment. Qualifying projects may include, but are not limited to, those described under the Voluntary Airport Low Emissions (VALE) program, without requiring the airport to be in a non-attainment or maintenance area, and the Zero Emissions Vehicles (ZEV) program.

For information on VALE see *https://www.faa.gov/airports/environmental/vale/.*

ii. Energy Efficiency of Airport Power Sources: Energy Efficiency of Airport Power Sources provides grant funding for energy assessments/audits and implementation of energy reduction measures to reduce energy consumption across airport operations. In order to be eligible for implementation of energy consumption reduction projects, an energy assessment/audit must have been completed. Requirements for an acceptable energy assessment/audit and project eligibility are based on Energy Efficiency of Airport Power Sources eligibility under 49 U.S.C. 47140(a)(b), and details are contained in chapter 6, section 7 of the AIP Handbook.

iii. Energy Supply, Redundancy and Microgrids: Energy Supply, Redundancy and Microgrids provides grant funding that can be used to improve the reliability and efficiency of the airport power supply. Eligibility is based on Energy Supply, Redundancy and Microgrids projects eligibility under 49 U.S.C. 47102(3)(P). Additional information is available at *https://www.faa.gov/airports/environmental/.*

iv. Airport Sustainability Planning: Airport Sustainability Planning provides grant funding for eligible airports to develop comprehensive sustainability plans. Based on the authority under 49 U.S.C. 47102(5), such plans may address a broad array of environmental and energy planning activities, green construction and operations, energy efficiency, and renewable energy. Consistent with E.O. 14008, a sustainability plan also may address climate resiliency. Additional information is available at *https://www.faa.gov/airports/environmental/sustainability/.*

v. Zero Emissions Vehicle: These grants provide funding to acquire zero-emissions vehicles and associated infrastructure at any primary or nonprimary airport eligible to receive AIP grants. See *https://www.faa.gov/airports/environmental/zero_emissions_vehicles/.*

vi. Reducing Impacts of Lead Emissions from Aviation Fuel: Grants are available for planning for unleaded aviation fuel infrastructure, and to plan for and construct run-up locations to reduce community exposure to emissions from leaded aviation fuel.

vii. Other AIP eligible projects that increase energy efficiency: Grants for projects that are otherwise eligible for AIP may be also eligible under this Priority Projects Category to the extent that implementation of the funded project reduces emissions or increase energy efficiency.

D. Application and Submission Information

D.1 Address To Request Application Package

Required application materials, including the Application for Federal Assistance (Form SF–424), are available at *https://www.faa.gov/airports/aip/aip_supplemental_appropriation.*

For specific technical questions about general AIP project eligibility or Airfield Operational Resiliency (AOR) project eligibility, please contact the appropriate Regional Office (RO) or Airports District Office (ADO). RO/ADO contact information is available at *https://www.faa.gov/about/office_org/headquarters_offices/arp/offices/regional_offices.*

For specific technical questions regarding Sustainable Aviation Fuel (SAF) projects and Emissions and Energy (EE) projects, please see section G for contact information.

D.2 Content and Form of Application Submission

Applicants are required to submit an application specifically referencing all requirements in this NOFO to be considered for supplemental discretionary funding, even if the applicant previously applied for funding.

All applications must contain the SF–424 identified in Section D.2.a. Applications should also include a project narrative with financial plan describing the project as explained in Section D.2.b. The SF–424 and the project narrative with financial plan should be in separate files in the same email submission.

Applicants are required to submit applications electronically to the following mailbox: *9-ARP-AIPSupp@FAA.gov.* The deadline for submittal is May 2, 2024, at 5 p.m. Eastern time. The applicant will receive a one-time notification of receipt of the application

materials. Subsequent applications or materials will not receive notification. No information regarding the status of the application will be provided until all reviews are complete.

Airports covered under FAA's State Block Grant Program should coordinate with their associated state agencies and must submit project applications via the procedures noted herein to the specified mailbox.

The applicant assumes responsibility for submitting complete applications on the required form to the identified mailbox. FAA assumes no responsibility for misdirected, incomplete, incorrect, or late applications.

Applicants are required to submit applications with the following information:

D.2.a Completed and Signed SF–424

The required form for this NOFO is located at *https://www.faa.gov/airports/resources/forms/media/SF424*. All other versions are obsolete, and their use may remove your application from consideration. This version of the SF–424 is a fillable.pdf. Please do not print and scan the form, nor imbed the form in your application documents or Project Narrative. Submit it by email as the completed fillable form. The SF–424 must be a stand-alone document. It must not contain a title page, nor be imbedded in any other document. All information required on the SF–424 must be completed as applicable. The following information must be included, or your application may be disqualified:

a. A valid and active UEI in Box 8c. The UEI must match the Legal Entity Name in Box 8a. DUNs number is no longer permitted on Federal award applications.

b. Funding Opportunity Number (FON) in Box 12. The FON for this NOFO is FAA–ARP–AIP–G–24–001.

c. Brief description of the project in Box 15, including the Priority Project Category identified in Section C.3. Please use ''AOR'' for Airfield Operational Resiliency; ''SAF'' for Sustainable Aviation Fuel; and ''EE'' for all Emissions and Energy projects. Use ''G'' for general AIP eligibility.

d. Proposed Start Date in Box 17 a. Project should go under grant no later than May 31, 2025.

e. Federal Funding Amount Requested from the FY 2023 Supplemental Discretionary Grants in Box 18a.

f. The file name for each SF–424 will use the following format for submission:

[LOCID] SF–424 FY 2023 Supplemental Discretionary Grants [Special Project Category abbreviation—G, AOR, SAF or EE]. Example: *XXX SF–424 FY 2023 Supplemental Discretionary Grants SAF*.

D.2.b Project Narrative With Financial Plan

Each project application should include a single project narrative with financial plan not to exceed 20 pages contained in its own file in the emailed application submission.

Each project narrative should include a schedule demonstrating that the airport sponsor can execute a grant agreement no later than May 31, 2025, meeting milestones in calendar year 2024. Calendar year 2024 milestones include, but are not limited to, progress of environmental reviews, airspace review and approvals, and depiction of the project on the Airport Layout Plan. The project narrative with financial plan should describe the project purpose, specific location on the airport, project scope, and how the project satisfies Administration priorities or safety, climate change and sustainability, or equity and workforce development, as summarized in Section A.

Each application must include a financial plan that ensures that the airport sponsor executes a grant by May 31, 2025, and that the airport sponsor demonstrates that the project is ready to begin within the timeframe provided and will be completed within the period of performance indicated in section B.5. The financial plan should show how the project will become operational in a timely manner. Finally, the airport sponsor should include information on its financing to complete the project and put it in use, including a plan to use FAA formula funding associated with the subject airport, either upon the subject project or another eligible project of similar or higher utility or National Priority Rating (NPR), as such term is defined in FAA Order 5090.5, *Formulation of the NPIAS and ACIP*.

The grant application financial plan may be based on estimates. However, FAA may request additional information, including bids or firm cost determinations, substantiation of greenhouse gas or emissions reductions, and associated requirements.

In addition, to enhance competitiveness of the application, each project narrative with financial plan should include the elements described in D.3.

D.3 All Applications

Project narratives should contain enough information about the project to establish basic eligibility, including expanded eligibility in the Priority Project Categories. Include enough information about the project to identify precise locations, purpose of the project, and project scope to calculate an NPR, which FAA will consider in prioritizing projects.

Each Priority Project Category application description should also include information to support the application, such as listed under D.3. and other relevant information to present the character of the project and show how it satisfies the criteria under section E.1.

D.3.a Airfield Operational Resiliency (AOR)

Applications for airfield operational resilience, including the preservation or advancement of safety standards or the advancement of the safety of airfield operations, including the operational resiliency of airfield pavement, marking, signage and lighting must describe:

i. the conditions, including natural disaster, from which the proposed project would provide prevention, resiliency, or recovery;

ii. whether the project pursues prevention of the occurrence (such as levees) or resistance to damage (such as timely appropriate pavement treatments or passive airfield drainage); or recovery from severe impacts (such as stormwater runoff management or snow removal);

iii. the likelihood of such impacts occurring in relation to the expected useful life of the proposed development improvements; and

iv. any specific reasons why the subject airfield is particularly vulnerable to negative impacts, including those from natural disaster, and the scale of that negative impact to the aviation system.

D.3.b Sustainable Aviation Fuels (SAF)

Applications for Sustainable Aviation Fuels (SAF) proposals, describe clearly how the project will support the implementation of SAF for distribution into aircraft at the airport. This description should include:

i. A project description consistent with improvements including, but not limited to, on-airport construction or expansion of pipelines, rail lines and spurs, loading and off-loading facilities, blending facilities and storage tanks;

ii. The absolute capacity of the facility in gallons to deliver SAF into-plane;

iii. How the scope of the proposed facility is reasonably consistent with the potential and operable market for SAF at the airport;

iv. How the sponsor intends to provide non-discriminatory, non-exclusive access to SAF for aeronautical users of the airport; and the sponsor's plan for covering the operational costs

of the facility through reasonable rates and charges;

v. Certification that the project supports the transition to sustainable aviation fuels that achieve at least a 50 percent reduction in lifecycle greenhouse gas emissions. SAF production and lifecycle greenhouse gas emissions are described in the Notice of Funding Opportunity for the *Fueling Aviation's Sustainable Transition Grant Program* available at *https://faa.gov/general/fueling-aviations-sustainable-transition-fast-grants.* Include a statement of how the project prevents degradation to the lifecycle carbon benefits.

D.3.c Emissions and Energy (EE)

Applications for projects focusing on the Expanded Emissions Eligibility; Energy Efficiency of Airport Power Sources; Energy Supply, Redundancy and Microgrids; Airport Sustainability Planning and ZEV for all airports, as described in C.3.a.3 will provide:

i. A cost estimate;

ii. For projects that will result in emissions reductions or air quality improvements: (a) the total project cost per tons that the emissions reduction will produce and the types of emissions it will reduce relative to a no-action baseline, including average annual amount and estimated amount over the project lifetime, and (b) a description of the methodology and tool used to calculate the estimated emissions reduction;

iii. An energy assessment or audit that describes the airport's heating and cooling, base load, back-up power, and power for on-road airport vehicles and ground support equipment and identifies the proposed project as a measure to reduce energy consumption for projects that will result in a reduction of airport energy consumption pursuant to the Energy Efficiency of Airport Power Sources Program (see AIP Handbook Chapter 6, section 7);

iv. Other environmental sustainability benefits with regard to energy efficiency, or reliability, such as through incorporation of specific design elements that address resiliency to climate change impacts; and

v. How the project addresses the disproportionate negative environmental impacts of transportation on disadvantaged communities, consistent with environmental justice and civil rights authorities.

D.4 Unique Entity Identifier and System of Award Management (SAM)

Applicants must comply with 2 CFR part 25—*Universal Identifier and System for Award Management.* All applicants must have a Unique Entity Identifier (UEI) provided by SAM. Additional information about obtaining a UEI and registration procedures may be found at the SAM website (currently at *http://www.sam.gov*).

Each applicant is required to: (1) be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application (which matches the airport sponsor's name on the application); and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FAA. Under FY 2023 Supplemental Discretionary Grants, the UEI and SAM account must belong to the entity that has the legal authority to apply for, receive, and execute these grants.

Once awarded, FAA grant recipient must maintain the currency of its information in SAM until the recipient submits the final financial report required under the grant or receives the final payment, whichever is later. A grant recipient must review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term.

FAA may not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time FAA is ready to make an award, FAA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant.

Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS: *https://sam.gov/content/fapiis*) to ensure registration information is current and complies with Federal requirements. Applicants should refer to 2 CFR 200.113 for more information about this requirement.

D.5 Submission Dates and Times

Airports sponsors must submit an application that meets the requirements of this NOFO no later than 5 p.m. Eastern time on May 2, 2024, to the following mailbox: *9-ARP-AIPSupp@FAA.gov*.

Applications may be based on estimates. However, FAA may request additional information, including bids or firm cost determinations, and other associated requirements after the review and selection of awards.

D.6 Intergovernmental Review

Not Applicable.

D.7 Funding Restrictions

Under 49 U.S.C. 47115, projects must meet airport and project eligibility criteria. Eligibility is derived from statute and may include projects to enhance airport safety, capacity, security, and the environment, or any combination of the above. In general, sponsors may receive AIP funds for most airfield capital improvements, and, in specific situations, for terminals, hangars, equipment, and nonaeronautical development. Operational costs—such as salaries, equipment, and supplies—are not eligible for FY 2023 Supplemental Discretionary Grants. Grant funds may not be used to support or oppose union organizing.

Please see below criteria and refer to chapters 3 and 4 of the AIP Handbook for further details on eligibility criteria and funding restrictions. Except where options are specifically noted or where nonmandatory language is used, the procedures and requirements in the AIP Handbook are mandatory. The general requirements for project funding include considerations of: project eligibility; project justification; good title of airport property; an FAA-approved airport layout plan (if applicable); airport-user consultations; complete required environmental reviews; a determination that the grant will yield a usable unit of work; certification that the project specification will meet FAA standards; applicable cost justifications; and a work plan to complete the project without unreasonable delay.

See section C for additional eligibility details for Priority Program Categories as derived from the Appropriations Act and Administration priorities.

Grant Funds, Sources and Uses of Project Funds: Project budgets should show how different funding sources will share in each activity and present those data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for or has been awarded, if any. Funding sources should be grouped into three categories: non-Federal, FY2023 Supplemental Discretionary Grants, and other Federal funding with specific amounts from each funding source, including formula funding under AIP and Airport Infrastructure Grants (AIG).

Sharing of Application Information: FAA may share application information within the Agency, Department, or with other Federal agencies if FAA determines that sharing is relevant to the respective program's objectives.

E. Application Review Information

FAA will implement the FY 2023 Supplemental Discretionary Grants as appropriate and consistent with statutory criteria. These comprise eligibility for airport planning, development, and environmental projects to support aeronautical activity at airports of all sizes across the country. Also, this NOFO supports Administration, DOT, and FAA priorities:

Safety: FAA seeks to fund projects that advance aviation safety standards and the safety of airfield operations;

Climate Resiliency and Sustainability: FAA seeks to fund airport projects that reduce emissions associated with airport operations, increase energy efficiency and support the ability of airports to incorporate sustainable energy sources. FAA seeks to incorporate evidence-based resilience and reliability measures for at-risk infrastructure, including measures to prevent or recover from the impacts of increased climate risks. FAA seeks to reduce the lifecycle greenhouse gas emissions from project materials and airport operations. FAA seeks to avoid adverse environmental impacts to air or water quality, wetlands, and endangered species, and address the disproportionate negative environmental impacts of transportation on disadvantaged communities, consistent with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619);

Equity: FAA seeks to fund projects that create proportional impacts to communities in a project area, including reducing negative impacts to disadvantaged communities, and increase equitable access to project benefits, consistent with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Governmen*t (86 FR 7009); and

Workforce Development, Job Quality, and Wealth Creation: FAA intends to use FY 2023 Supplemental Discretionary Grants to support the creation of good-paying jobs with the free and fair choice to join a union and to support the incorporation of strong labor standards and training and placement programs, especially registered apprenticeships, in project planning stages, and consistent with Executive Order 14025, *Worker Organizing and Empowerment* (86 FR 22829). FAA also supports wealth creation, consistent with the DOT's Equity Action Plan promoting inclusive economic development and entrepreneurship measures such as the utilization of Disadvantaged Business Enterprises, Minority-owned Businesses, Women-owned Businesses, or 8(a) firms.

E.1 Criteria

Projects are subject to the availability of funds. Project applications are subject to administrative screening.

All applications will be assessed using the following criteria:

E.1.a Initial Screening

i. Projects must meet the eligibility requirements identified in section C.3 of this NOFO, including general AIP eligibility.

ii. The sponsor has sufficient financial resources to meet milestones in 2024 and 2025 and fulfill the purpose of the project described in the project narrative. The project funding plan uses available FAA formula funding, including AIP and AIG funds, not dedicated to another eligible project. All applicants should have a plan to address potential cost overruns as part of an overall funding plan.

iii. Projects should be able to execute a grant agreement for the project no later than May 31, 2025. Certain policy milestones must be met executing a grant agreement. These include depiction of capital improvement projects on the airport's approved ALP (if applicable), a National Environmental Policy Act environmental review determination (if applicable), an energy assessment/audit for construction of energy efficiency projects, and all necessary airspace studies.

iv. The readiness of the project to be completed within a period of performance, indicated in section B.5.

v. FAA will consider the NPR in prioritizing projects.

E.1.b Merit Criteria

i. FAA will consider the degree to which the project preserves or advances airfield safety standards and the safety of airfield operations.

ii. FAA will consider the degree to which the project incorporates evidence-based resilience and reliability measures for at-risk infrastructure, including measures to prevent or recover from the impacts of increased climate risks.

iii. FAA will consider the degree to which the project reduces the lifecycle greenhouse gas emissions from project materials and airport operations, including steps to make SAF available.

iv. FAA will consider the degree to which the project reduces emissions associated with airport operations, increases energy efficiency, and supports the ability to incorporate sustainable energy sources.

v. FAA will consider the degree to which the project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, and addresses the disproportionate negative environmental impacts of transportation on disadvantaged communities, consistent with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619).

vi. FAA will consider the degree to which the project reduces negative impacts to disadvantaged communities, and increases equitable access to project benefits, consistent with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Governmen*t (86 FR 7009).

vii. FAA will consider the degree to which the project complies with the Department of Transportation's Equity Action Plan through the:

- creation of good-paying, safe jobs with free and fair choice to join a union including through the use of a project labor agreement;
- promotion of investments in high-quality workforce development programs with supportive services to help train, place, and retain people in good-paying jobs or registered apprenticeships. These programs should have a focus on women, people of color, and others that are underrepresented in infrastructure jobs (people with disabilities, people with convictions, etc.);
- adoption of changes to hiring policies and workplace cultures to promote the entry and retention of underrepresented populations; and
- promotion of inclusive economic development and entrepreneurship, such as the utilization of Disadvantaged Business Enterprises, Minority-owned Businesses, Women-owned Businesses, or 8(a) firms.

E.1.c Selection Considerations

i. FAA will consider the degree to which the project enables subsequent projects, such as energy assessments or audits, discussed in C.3.a.3, if applicable.

ii. FAA will consider the degree to which the applicant presents a plan to measure the impacts of the project, including how the project contributes to energy efficiency or emissions improvements or reduction in life-cycle greenhouse gas emissions. These activities may not be eligible for reimbursement.

iii. FAA will consider geographic variety.

iv. FAA will consider projects that take advantage of the flexibility of eligibility in the Appropriations Act that is not available under other FAA grant programs, such as projects in the Airfield Operational Resiliency, Sustainable Aviation Fuel, or Emissions and Energy Priority Project Categories. FAA will consider new or alternative uses of technology or processes in the execution of the project.

v. FAA will consider projects that advance to grant very quickly or have a particular demand for funding in FY 2024.

The review and selection process is described further in section E.2, of this NOFO.

Applicants are encouraged to submit projects that meet as many of the above considerations as possible.

E.1.d Project Prioritization

FAA will prioritize projects that qualify under the Priority Project Categories described in section (C.3.a) and advance the Departmental priorities described in section (A).

E.2 Review and Selection Process

FAA will evaluate how well the projects meet the criteria in E.1, including project eligibility, justification, readiness, and the availability of matching funds.

FAA will also consider how well projects advance the goals of the following Executive Orders, which are incorporated into the criteria under E.1.: Executive Order 13990, ''*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*''; Executive Order 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*''; Executive Order 14008, ''*Tackling the Climate Crisis at Home and Abroad*''; Executive Order 14030, ''*Climate Related Financial Risk*''; and Executive Order 14036, ''*Promoting Competition in the American Economy.*''

Applications are first reviewed for eligibility, certainty, and timeliness of implementation consistent with the requirements of this NOFO and the intent of the specific project category, as described in E.1.a. Applications are then reviewed for how well the proposed project(s) meets the criteria in E.1.b and ranked by program division, field and Regional Office staff. The top projects for each airport category are then evaluated by a National Control Board (NCB), with consideration of the Selection Considerations, or other considerations as they arise in real-time. The NCB has representatives from each Region and Headquarters management and recommends project and funding levels to senior leadership.

E.2.a Administrative Review

FAA will evaluate whether the application meets the requirements specified in section D.2.a, and the request is within stated goals for the airport's hub status.

E.2.b Merit Review

FAA will prioritize funding projects that are complete usable units of work, to include construction of eligible airport development, acquisition and installation of eligible equipment, acquisition and commissioning of eligible rolling stock equipment, procurement of actionable plans, including sustainability plans and energy planning as described in section C.3.

E.2.c Selection Criteria

After completing the merit review, among projects of similar merit, FAA will select applications based on availability of funds by airport type and as described in E.1.c.

E.3 Integrity and Performance Check

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, FAA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered. FAA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

E.4 Anticipated Announcement and Federal Award Dates

FAA intends to release a Notice of Intent to Award FY 2023 Supplemental Discretionary Grants within 90 days of the application deadline.

F. Federal Award Administration Information

F.1 Federal Award Notices

FY 2023 Supplemental Discretionary Grants awards are announced through a Congressional notification process and the Secretary's Notice of Intent to Fund, after which an FAA RO/ADO representative will contact the airport sponsor with further information and instructions. Once all pre-grant actions are complete, FAA RO/ADO will offer the airport sponsor a grant for the announced project. This offer may be provided through postal mail or by electronic means. Once this offer is signed by the airport sponsor, it becomes a grant agreement. Awards made under this program are subject to conditions and assurances in the grant agreement.

F.2 Administrative and National Policy Requirements

Pre-Award Authority: Under 49 U.S.C. 47110(b)(2), all project costs must be incurred after the grant execution date unless specifically permitted under the AIP statutes. Table 3–60 of the AIP Handbook lists the rules regarding when project costs can be incurred in relation to the grant execution date, the type of funding, and the type of project. Certain airport development costs incurred before execution of the grant agreement are allowable, but only if certain conditions under 49 U.S.C. 47110(b)(2)(D) and Table 3–60 of the AIP Handbook are met.

Grant Requirements: All grant recipients are subject to the grant requirements of the AIP, including the grant assurances, found in 49 U.S.C. chapter 471. Grant recipients are subject to requirements in FAA's *AIP Grant Agreement* for financial assistance awards; the annual certifications and assurances required of applicants; and any additional applicable statutory or regulatory requirements, including nondiscrimination requirements and 2 CFR part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. Grant requirements include, but are not limited to, approved projects on an airport layout plan, and compliance with Federal civil rights laws, Buy American requirements under 49 U.S.C. 50101, the *Department of Transportation's Disadvantaged Business Enterprise (DBE) Program* regulations for airports (49 CFR part 23 and 49 CFR part 26), Build America, Buy America requirements in sections 70912(6) and 70914 of Public Law 117–58, the Infrastructure Investment and Jobs Act, and prevailing wage rate requirements under the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5, and reenacted at 40 U.S.C. 3141–3144, 3146, and 3147).

Standard Assurances: Each grant recipient must assure that it will comply

with all applicable Federal statutes, regulations, executive orders, directives, FAA circulars, and other Federal administrative requirements in carrying out any project supported by an FY 2023 Supplemental Discretionary Grant. The grant recipient must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FAA. The grant recipient understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The grant recipient must agree that the most recent Federal requirements will apply to the project unless FAA issues a written determination otherwise.

As referenced under Grant Requirements, the grant recipient must submit the certifications at the time of grant application, and assurances must be accepted as part of the grant agreement at the time of accepting a grant offer. Grant recipients must also comply with the requirements of 2 CFR part 200, which ''are applicable to all costs related to Federal awards'' and which are cited in the grant assurances of the grant agreements. The Airport Sponsor Assurances are available on FAA website at: *https://www.faa.gov/airports/aip/grant_assurances*.

Critical Infrastructure Security and Resilience: It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against all hazards; including both physical and cyber risks consistent with Presidential Policy Directive 21—Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. Each applicant selected for Federal funding under this NOFO must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cybersecurity risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cybersecurity and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds for construction.

Domestic Preference Requirements: As expressed in E.O. 14005, ''*Ensuring the Future Is Made in All of America by All of America's Workers*'' (86 FR 7475), the executive branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Funds made available under this NOFO are subject to the domestic preference requirements of the Buy America Act codified in 49 U.S.C. 50101 and Build America, Buy America requirements of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA). FAA expects all applicants to comply with those requirements without needing a waiver. However, if requesting a waiver, a recipient must be prepared to demonstrate how it will maximize the use of domestic goods, products, and materials in constructing its project.

Civil Rights and Title VI: As a condition of a grant award, applicants shall demonstrate that they will comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and implementing regulations (49 CFR part 21), the Airport and Airway Improvement Act of 1982 (49 U.S.C. 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.*), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.*), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities. This may include, as applicable, providing a current Title VI Program Plan and a Community Participation Plan (alternatively may be called a Public Participation Plan) to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is also required for every grant application, unless excused by the FAA. Applicants shall affirmatively ensure that when carrying out any project supported by this grant that you will comply with all federal nondiscrimination and civil rights laws based on race, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), creed, age, disability, genetic information, or environmental justice in consideration for federal financial assistance. Applicants who have not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds. The Department's and FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

Federal Contract Compliance: As a condition of grant award and consistent with E.O. 11246, Equal Employment Opportunity (30 FR 12319, and as amended), all Federally assisted contractors are required to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for work being performed by people of color. Under Section 503 of the Rehabilitation Act and its implementing regulations, affirmative action obligations for certain contractors include an aspirational employment goal of 7 percent workers with disabilities.

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. OFCCP has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. OFCCP will identify projects that receive an award under this NOFO and are required to participate in OFCCP's Mega Construction Project Program from a wide range of Federally-assisted projects over which OFCCP has jurisdiction and that have a cost above $35 million that receive awards under this funding opportunity to partner with OFCCP, if selected by OFCCP, as a condition of the DOT award.

Performance and Program Evaluation: As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by DOT or another agency or partner. The evaluation may take different forms, such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation and/or use information available through other reporting. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or DOT

staff; (2) provide access to program records and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff. Requested program records or information will be consistent with record requirements outlined in 2 CFR 200.334 through 200.338 and the grant agreement.

Recipients and subrecipients are also encouraged to incorporate program evaluation, including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Pub. L. 115–435 (2019) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.'' 5 U.S.C. 17 311 Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, Part 6 Section 290).

F.3 Reporting

Grant recipients are subject to financial reporting per 2 CFR 200.328 and performance reporting per 2 CFR 200.329. Under FY 2023 Supplemental Discretionary Grants, the grant recipient is required to comply with all Federal financial reporting requirements and payment requirements, including the submittal of timely and accurate reports. Financial and performance reporting requirements are available in FAA October 2020 Airport Improvement Program (AIP) Grant Payment and Sponsor Financial Reporting Policy, which is available at *https://www.faa.gov/sites/faa.gov/files/airports/aip/grant_payments/aip-grant-payment-policy.pdf*.

The grant recipient must comply with annual audit reporting requirements. The grant recipient and sub-recipients, if applicable, must comply with 2 CFR part 200, subpart F, Audit Reporting Requirements. The grant recipient must comply with any requirements outlined in 2 CFR part 180, *OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)*.

G. Federal Awarding Agency Contacts

G.1 General Inquiries

For general inquiries, please contact: David F. Cushing, Manager, Airports Financial Assistance Division, APP–500, at 202–267–8827.

For further information concerning this NOFO, please contact your local Regional Office or District Office. Contact information is available at *https://www.faa.gov/airports/regions/*.

G.2 Technical Inquiries

For technical questions regarding specific operational resiliency, sustainable aviation fuel and energy and environmental sustainability programs described in this NOFO, please contact Matthew Klein, *matthew.klein@faa.gov*, 202–267–4086.

To ensure applicants receive accurate information about eligibility for the program, the applicant is encouraged to contact FAA directly, rather than through intermediaries or third parties with questions.

Issued in Washington, DC on March 26, 2024.

David F. Cushing,

Manager, Airports Financial Assistance Division.

[FR Doc. 2024–06778 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to an assignment agreement executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State of Texas. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway projects will be barred unless the claim is filed on or before the deadline. For the projects listed below, the deadline is August 29, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2358; email: *Patrick.Lee@txdot.gov*. TxDOT's normal business hours are 8 a.m.–5 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting the local TxDOT office at the address or telephone number provided for each project below.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section

1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

The projects subject to this notice are:

1. FM 236 from US 77 to FM 237, Victoria County, Texas. The project will widen FM 236 to an undivided four-lane highway with two 12-foot lanes in each direction. The project will also provide a 10-foot shoulder in each direction, and a continuous 12-foot turn lane. The length of the project is approximately 10.2 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on December 14, 2023, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Yoakum District Office at 403 Huck Street, Yoakum, Texas 77995; telephone: (361) 293–4300.

2. IH–45 from south of Causeway to south of 61st Street, Galveston County, Texas. The proposed I–45 improvements will include reconstructing and widening I–45 from the Galveston Causeway Bridge to 61st Street and adding a direct connector from northbound 61st Street to northbound I–45. The project is approximately 2.5 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on January 11, 2024, and other documents in the TxDOT project file. The Categorical Exclusion determination and other documents in the TxDOT project file are available by contacting the TxDOT Houston District Office at 7600 Washington Avenue, Houston, Texas 77007; telephone: (713) 802–5076.

3. US 277 Relief Route, from US 67 to 0.93 mile north of FM 2105, Tom Green County, Texas. The project will take place in the vicinity of San Angelo and will convert the existing US 277 to a rural highway section with frontage roads, increase capacity from two lanes to four lanes (two in each direction), add a vegetated median with cable traffic barrier between main lanes, and will include turn-around lanes at grade-separated intersections. The length of the project is approximately 2.9 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on February 27, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT San Angelo District Office at 4502 Knickerbocker Road, San Angelo, Texas 76904; telephone: (325) 944–1501.

4. Inspiration Road/Military Parkway Loop from IH–2 to Military Parkway, and from Inspiration Road to FM 1016, Hildalgo County, Texas. The project will widen and reconstruct Inspiration Road and Military Parkway. Inspiration Road, from approximately 200 feet south of IH–2 to Military Parkway, would be widened to provide four 11 to 14-foot-wide travel lanes, two 10-foot-wide shoulders, a 12 to 16-foot-wide continuous left turn lane, and 5 to 6-foot-wide sidewalks on both sides of the roadway; a length of 2.5 miles. On Military Parkway, west of Inspiration Road, from CR 2791 to Inspiration Road, a transition would be provided. Military Parkway, from Inspiration Road to FM 1016, would be widened and reconstructed to include four 12-foot-wide travel lanes, one 16-foot-wide continuous left turn lane, two 10-foot-wide shoulders, and a 6-foot-wide sidewalk on both sides of the roadway with the exception of the section of the levees which would be a 5-foot-wide sidewalk along the north side only; a length of 2.0 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on January 4, 2024, and other documents in the TxDOT project file. The EA, FONSI and other documents in the TxDOT project file are available by contacting the TxDOT Pharr District Office at 600 West Interstate 2, Pharr, Texas 78577; telephone: (956) 702–6102.

Authority: 23 U.S.C. 139(l)(1).

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2024–06826 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person whose property and interests in property have been unblocked and who has been removed from the Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Compliance, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov*).

Notice of OFAC Action

On March 27, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are unblocked and they have been removed from the SDN List.

Entity

1. BELLIZO, Huygensstraat 42, JM, Boxtel 5283, Netherlands; website *www.bellizo.nl;* Organization Established Date 01 Jan 2020; Trade License No. 76856291 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: PEIJNENBURG, Alex Adrianus Martinus).

Dated: March 27, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–06836 Filed 3–29–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Family, Caregiver, and Survivor Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory

Committee Act (FACA), 5 U.S.C. Ch. 10, that the Veterans' Family, Caregiver, and Survivor Advisory Committee will meet in-person and virtually on Wednesday, May 1, 2024. The meeting location is The American Legion, 1608 K Street NW, Washington, DC 20006. The meeting sessions will begin and end as follows:

Date	Time
May 1, 2024	8 a.m. to 4 p.m. Eastern Standard Time (EST).

The meeting is open to the public and will also be available virtually via Microsoft Teams.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs with respect to the administration of benefits by VA for services to Veterans' families, caregivers, and survivors.

On Wednesday, May 1, 2024, the agenda will include opening remarks from the Executive Director, Caregiver Support Program, the Survivors' Assistance and Memorial Support Program (SAMS), Veterans Health Administration, the Office of Survivor Assistance, Veterans Benefits Administration, and briefings from the subcommittee chairs.

Time will be allocated for receiving public comments to the committee at 2:45 p.m. to 3:45 p.m. (EST). Individuals wishing to make public comments should contact Dr. Betty Moseley Brown, Designated Federal Officer at (210) 392–2505 or *VHA12CSPFAC@va.gov* and must submit a 1 to 2-page summary of their comments for inclusion in the official meeting record. In the interest of time and to accommodate more speakers each speaker will be held to a 3-minute time limit. Each public speaker will receive a confirmed time for speaking via email from the Designated Federal Officer. Additionally, the Committee will accept written comments from interested parties on relevant issues until Friday, April 26, 2024, at 5 p.m. (EST). Public transportation is strongly encouraged as there is limited street parking or paid public parking garages in the vicinity.

All virtual attendees must register with the Designated Federal Officer at *VHA12CSPFAC@va.gov* and request the meeting link by Monday, April 29, 2024. Anyone seeking additional information should contact Dr. Betty Moseley Brown, at (210) 392–2505 or *Betty.MoseleyBrown@va.gov.*

Dated: March 26, 2024.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–06767 Filed 3–29–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0469]

Agency Information Collection Activity: Certificate Showing Residence and Heirs of Deceased Veterans or Beneficiary

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 31, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0469'' 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. 2900–0469'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Certificate Showing Residence and Heirs of Deceased Veterans of Beneficiary, VA Form 29–541. Certificate Showing Residence and Heirs of Deceased Veterans of Beneficiary, VA Form 29–541e (DocuSign).

OMB Control Number: 2900–0469.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the Department of Veterans Affairs (VA) to establish entitlement to Government Life Insurance proceeds in estate cases when formal administration of the estate is not required. The VA Form 29–541e has been added to this collection. The information on the form is required by law, Title 38, U.S.C. 1817 and 1950. This form expired due to high volume of work and staffing changes.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,039 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,078.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–06818 Filed 3–29–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Agency Information Collection Activity Under OMB Review: Application for United States Flag for Burial Purposes

AGENCY: Veterans Benefits Administration (VBA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the VBA, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0013.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0013'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 2301(f)(1)).

Title: Application for United States Flag for Burial Purposes, (VA Form 27–2008).

OMB Control Number: 2900–0013.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 27–2008 is primarily used for VA compensation and pension programs that require claimants to file an application for benefits subsequent to the death of the Veteran to determine eligibility for the benefit. Collection of this information is conducted at the time the next-of-kin or friend of a deceased Veteran requests a burial flag. Without the information collected by VA Form 27–2008, entitlement to the benefit could not be determined.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 5310 on January 25, 2024.

Affected Public: Individuals or households.

Estimated Annual Burden: 535,500.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time per family of deceased Veteran.

Estimated Number of Respondents: 753,000.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–06799 Filed 3–29–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Monday,
No. 63 April 1, 2024

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, and 65
Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, and 65

[Docket No. FAA–2022–1463; Amdt. Nos. 61–153, 63–46, and 65–64]

RIN 2120–AL74

Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference

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

ACTION: Final rule.

SUMMARY: This final rule revises certain regulations governing airman certification. Specifically, the FAA Airman Certification Standards and Practical Test Standards comprise the testing standard for practical tests and proficiency checks for persons seeking or holding an airman certificate and/or rating. This rule incorporates these Airman Certification Standards and Practical Test Standards by reference into the certification requirements for pilots, flight instructors, flight engineers, aircraft dispatchers, and parachute riggers.

DATES: This final rule is effective on May 31, 2024.

The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of May 31, 2024.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How to Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: James Ciccone, Training and Certification Group, AFS–810, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1100; email *ACSPTSinquiries@faa.gov*.

SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used in This Document

Administrative Procedure Act (APA)
Aeronautical Information Manual (AIM)
Airman Certification Standards (ACS)
Airline Transport Pilot (ATP)
Area of Operation (AOO)
Aviation Rulemaking Advisory Committee ACS Working Group (ARAC ACS WG)
Instrument Proficiency Check (IPC)
Instrument Flight Rules (IFR)
Incorporation by Reference (IBR)
Pilot-in-Command Proficiency Check (PIC PC)
Practical Test Standards (PTS)
Vertical Takeoff and Landing (VTOL)
Visual Flight Rules (VFR)

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I. Executive Summary

This final rule adopts several amendments to parts 61, 63, and 65 of Title 14 of the Code of Federal Regulations (14 CFR) by incorporating by reference (IBR) the Airman Certification Standards (ACS) and Practical Test Standards (PTS). The ACS and PTS [1] serve as the testing standards for airman certificates and rating practical tests. The FAA notes that, while certain revisions were made to the ACS and PTS as an outgrowth of public notice and comment, there are no major substantive changes to the testing standards already in use or the conduct of the practical test such that the scope of the practical test is altered. Rather, this final rule brings the ACS and PTS into the FAA regulations through the proper notice and comment process required by the Administrative Procedure Act (APA).[2]

As it pertains to pilots and flight instructors, the FAA incorporates thirty (30) pilot and flight instructor ACS and PTS in part 61 by reference through a centralized IBR section in new § 61.14. The FAA directs compliance on the respective practical tests and proficiency checks with the appropriate ACS and PTS through revisions in §§ 61.43, 61.57, 61.58, 61.321, and 61.419. Additionally, the final rule adds an appendix to part 61, which sets forth which ACS or PTS applies to a certificate and/or rating sought or proficiency check.

This final rule also makes a non-substantive conforming amendment to § 61.157 to align the Airline Transport Pilot (ATP) airplane and powered-lift flight proficiency areas of operation with the areas of operation contained in the ATP and Type Rating for Airplane Category ACS and ATP and Type Rating for Powered-Lift Category ACS, respectively. The FAA also revised ''must consist of'' in § 61.57(d) to ''must include'' to align with the definitions in § 1.3. The remaining changes were made to the ACS or PTS documents as a result of public comments.

Further, this final rule revises certain provisions applicable to flight engineers in part 63 and aircraft dispatchers and parachute riggers in part 65. First, this final rule incorporates the Flight Engineer PTS by reference in § 63.39. Additionally, this final rule adds the Aircraft Dispatcher PTS and Parachute Rigger PTS to § 65.23, the existing centralized IBR section for part 65, and removes the now inapplicable Aviation Mechanic PTS from the centralized section. The final rule also revises the appropriate sections in subparts C and F of part 65 (*i.e.,* §§ 65.59, 65.115, 65.119, 65.123) to require compliance with the respective PTS. Finally, minor editorial revisions remove gender references in both parts.

II. Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code (U.S.C.). Subtitle I, section 106, describes the authority of the FAA Administrator to promulgate regulations and rules. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

[1] ACS and PTS refers to both the singular Standard and the plural Standards throughout the document.

[2] 5 U.S.C. 551–559.

This rulemaking is promulgated under the authority granted to the Administrator in 49 U.S.C. subtitle VII, part A, subpart iii, chapter 401, Section 40113 (prescribing general authority of the Administrator of the FAA with respect to aviation safety duties and powers to prescribe regulations) and subpart III, chapter 447, sections 44701 (general authority of the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security), 44702 (general authority of the Administrator to issue airman certificates), and 44703 (general authority of the Administrator to prescribe regulations for the issuance of airman certificates when the Administrator finds, after investigation, that an individual is qualified for and physically able to perform the duties related to the position authorized by the certificate). This rulemaking is within the scope of that authority.

III. Background

A. Regulatory History and Incorporation by Reference

Under 49 U.S.C. 44703, the Administrator of the FAA possesses the authority to issue airman certificates when the Administrator finds, after investigation, that an individual is qualified for and able to perform the duties related to the position authorized by the certificate.[3] The Administrator carries out this investigative authority through 14 CFR parts 61, 63, and 65, which prescribe the requirements for airmen to obtain a certificate and a rating.[4] Each respective part contains the general requirements for eligibility, which include aeronautical knowledge, flight proficiency, and aeronautical experience, as applicable, for each certificate and/or rating sought. This generally includes the requirement to pass a practical test[5] specific to the certificate and/or rating sought.[6]

The FAA has long set forth certain items for inclusion on the practical test. Prior to 1997,[7] these items were included directly in the regulations of part 61 through flight proficiency requirements, resulting in an unclear, broad, and discretionary testing framework.[8] After 1997, the FAA set forth the flight proficiency requirements for flight training and practical tests with approved areas of operation, more general in character than the flight proficiency procedures and maneuvers, and simplified the practical test general procedures regulations to require performance of the areas of operation.[9]

To implement testing on the areas of operation, the FAA established the Practical Test Standards (PTS) to define acceptable performance of the flight proficiency required to obtain a certificate and/or rating. The PTS applied to specific certificates and/or ratings sought and incorporated the areas of operation set forth in the applicable regulations,[10] some of which continue to be used as the current testing standard. Within the PTS, the areas of operation were designated as phases of the practical test, which were further extrapolated into tasks comprised of knowledge areas, flight procedures, or maneuvers appropriate to the overarching area of operation. An evaluator[11] is responsible for determining whether the applicant meets the standards outlined in the objective of each required task evaluated in accordance with the respective PTS. While developed primarily in response to part 61 revisions, the FAA also published and utilized PTS for testing under parts 63 and 65.[12]

In 2011, the FAA began establishing the ACS to enhance the testing standard for the knowledge and practical tests.[13] In cooperation with the ACS Working Group (ARAC ACS WG), established through the Aviation Rulemaking Advisory Committee (ARAC),[14] the FAA integrated ''aeronautical knowledge'' and ''risk management'' elements into the existing areas of operations and tasks set forth in the PTS. Therefore, the ACS is a comprehensive presentation integrating the standards for what an applicant must know, consider, and do to demonstrate proficiency to pass the tests required for issuance of the applicable airman certificate or rating.

Given this transition, in 2018,[15] the FAA removed the reference to the practical test standards in § 61.43 and broadened the regulatory language to encompass the standards set forth in the ACS, where applicable (*i.e.,* where ACS were developed and actively utilized for practical tests of certain certificates). The regulatory language adopted in 2018 that required applicants to perform the tasks specified in the areas of operation for the airman certificate or rating sought is how the regulation is situated prior to this final rule. The FAA notes that some PTS have fully transitioned to ACS, rendering those

[3] By statute, a person may not serve in any capacity as an airman with respect to a civil aircraft, aircraft engine, propeller, or appliance used, or intended for use, in air commerce without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued. 49 U.S.C. 44711. Title 49 U.S.C. 40102 sets forth the definition and the duties of an airman.

[4] Part 61 prescribes certification requirements for pilots, flight instructors, and ground instructors; part 63 prescribes certification requirements for flight crewmembers other than pilots; part 65 prescribes certification requirements for airmen other than flight crewmembers.

[5] A practical test is a test on the areas of operations for an airman certificate, rating, or authorization that is conducted by having the applicant respond to questions and demonstrate maneuvers in flight, in a flight simulator, or in a flight training device, pursuant to 14 CFR 61.1. Practical tests are administered by FAA inspectors or private persons designated by the Administrator. *See* 49 U.S.C. 44702(d).

[6] Certain certificates do not require the successful completion of a practical test to obtain the certificate. For example, a certificate based on military competency requires only a military competency aeronautical knowledge test, pursuant to § 61.73(b); similarly, a ground instructor certificate requires only a knowledge test on fundamentals of instructing and certain aeronautical knowledge areas, pursuant to § 61.213.

[7] Prior to 1997, the FAA referred to ''practical tests'' as both ''practical test'' and ''flight test.''

[8] For a comprehensive history of this testing framework, see *Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference* notice of proposed rulemaking, 87 FR 75955 (Dec. 12, 2022).

[9] *Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules* final rule, 62 FR 16220 (Apr. 4, 1997).

[10] As an example, the FAA published a PTS for the Commercial Pilot—Rotorcraft Category, Helicopter and Gyroplane Class. Within the PTS, the areas of operation correspond with the areas of operation set forth in 14 CFR 61.127(b)(3) and (4), flight proficiency areas of operation for rotorcraft category rating with a helicopter class rating and rotorcraft category rating with a gyroplane class rating, respectively.

[11] As it applies to the particular evaluation, an evaluator is considered: an aviation safety inspector; pilot examiner (other than administrative pilot examiners); training center evaluator (TCE); chief instructor, assistant chief instructor, or check instructor of a pilot school holding examining authority; an instrument flight instructor conducting an instrument proficiency check; or an authorized sport pilot instructor.

[12] Specifically, the FAA developed PTS for Flight Engineers in part 63 and Aircraft Dispatchers, Mechanic Technicians, and Parachute Riggers in part 65. Because these regulations do not specifically set out the areas of operation in the same manner as part 61, respective sections of this preamble further describe these PTS.

[13] The ACS were intended to implement a new, systematic approach to testing that would (1) provide clearer standards, (2) consolidate redundant tasks, and (3) connect the standards for knowledge, risk management, and skills to the knowledge and practical tests.

[14] The Federal Advisory Committee Act, 5 U.S.C. app. 2, provides authority for the ARAC. The ARAC ACS WG includes the FAA, advocacy groups, instructor groups, training providers, academic institutions, and labor organizations.

[15] *Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions* final rule, 83 FR 30232 (Jun. 27, 2018).

corresponding PTS obsolete.[16] While FAA continues to actively convert the remaining PTS to ACS in collaboration with the ARAC ACS WG, FAA will continue to use the PTS for some certificates and ratings pending development of the corresponding ACS, followed by further rulemaking.

While FAA did not originally consider the content of the ACS and PTS to contain regulatory requirements, as stated in the 2018 final rule,[17] use of the ACS and PTS by the FAA impose requirements on all persons seeking an airman certificate or rating in parts 61, 63, and 65. As previously discussed, the ACS and PTS require an applicant seeking a certificate or rating to complete specific tasks and maneuvers to a minimum prescribed standard to obtain the applicable certificate or rating.[18] As such, if an applicant does not perform a task to the standard in the applicable ACS or PTS, the applicant cannot obtain the applicable certificate and rating. Unsatisfactory performance results in a notice of disapproval and/or denial of the certificate or rating.

Because of the regulatory nature and purpose of the ACS and PTS, this final rule will IBR the ACS and PTS into parts 61, 63, and 65 so that the standards carry the full force and effect of regulation. Due to the unique nature of the ACS and PTS documents, which are lengthy and contain complex technical tables, the FAA finds it more appropriate to incorporate these standards by reference than to reproduce the documents in their entirety into the Code of Federal Regulations (CFR), as subsequently discussed in this preamble.

IBR is a mechanism that allows Federal agencies to comply with the requirements of the APA to publish rules in the **Federal Register** and the CFR by referring to material published elsewhere.[19] Material that is incorporated by reference has the same legal status as if it were published in full in the CFR and **Federal Register**.

In accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[20] the FAA makes the ACS and PTS reasonably available to interested parties by providing free online public access to view on the FAA Training and Testing website at *www.faa.gov/training_testing.* The ACS and PTS are available for download, free of charge, at the provided web address. The FAA will continue to provide the ACS and PTS to interested parties in this manner. For a complete list and discussion of the ACS and PTS incorporated by reference in parts 61, 63, and 65, see section IV.A.2. of this preamble.

B. Summary of NPRM

On December 12, 2022, the FAA published a notice of proposed rulemaking (NPRM) titled ''Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference.'' [21] In the NPRM, the FAA proposed several amendments to parts 61, 63, and 65 that would IBR the ACS and PTS into the certification requirements for pilots, flight instructors, flight engineers, aircraft dispatchers, and parachute riggers. The rulemaking docket [22] contained all ACS and PTS proposed to be incorporated by reference for public inspection.

C. General Overview of Comments

The NPRM provided a 30-day comment period, extended by an additional 30 days,[23] which ended on February 10, 2023. The FAA received comments from 39 individuals and organizations. The majority of comments came from individuals. Several industry advocacy organizations also submitted comments. Many comments pertained to more than one issue, such as specific revisions to narrow elements and tasks within the PTS and ACS, suggestions considered out of scope, legal issues, and administrative matters. In addition, the majority of comments received pertained to the content of the ACS and PTS documents rather than the proposed amendments to parts 61, 63, and 65.

IV. Discussion of the Final Rule and Comments

A. Amendments to 14 CFR Parts 61, 63, and 65

In the NPRM, the FAA proposed to amend parts 61, 63, and 65 to IBR the ACS and PTS. The FAA received several general comments opposed to this rulemaking, as discussed in the subsequent section. However, the FAA did not receive any comments suggesting alternatives to the mechanism of IBR or to the regulatory language in the proposed rule. The FAA adopts the regulatory text as proposed with various revisions to the ACS and PTS themselves, as discussed in the subsequent sections of this preamble. The following table lists the amendments made to the FAA regulations by this final rule and a summary of those provisions.

TABLE 1—AMENDMENTS TO FAA REGULATIONS

14 CFR § affected	Summary of provision
61.14	Create a centralized IBR section to IBR 30 ACS and PTS in part 61.[24]
61.43(a)(1)	Revise to require completion of the practical test for a certificate or rating to consist of performing the tasks specified in the areas of operation in the applicable ACS or PTS for the airman certificate or rating sought.
61.57(d)(1)	Revise to state that the instrument proficiency check (IPC) must consist of the areas of operation contained in the applicable ACS as appropriate to the rating held.
61.58(d)(1)	Revise to require that the PIC proficiency check specifically consists of the areas of operation contained in the applicable ACS or PTS.

[16] The FAA notes that it received one comment on the NPRM to this final rule contending that utilization of the ACS has increased the accident rate overall, encouraging a transition back to the PTS. However, the commenter did not provide any data, nor has the FAA identified any correlation between accidents and the ACS. The FAA intends to continue moving forward with the ACS framework as the testing standard for the foreseeable future.

[17] 83 FR at 30269.

[18] The FAA directs examiners to conduct practical tests in accordance with the appropriate ACS or PTS pursuant to FAA Order 8900.1, Vol. 5, Chap. 1, Sec. 4. The appropriate volume, chapter, and section pursuant to the applicable certificate or rating sought found in FAA Order 8900.1 provides additional direction (*e.g.,* Vol. 1, Chap. 2, Sec. 7, Conduct a Private Pilot Certification, Including Additional Category/Class Ratings, directs an examiner to conduct the practical test in accordance with the private pilot PTS in paragraph 5–382).

[19] 5 U.S.C. 552(a).

[20] 5 U.S.C. 552(a) requires that matter incorporated by reference be ''reasonably available'' as a condition of its eligibility. Further, 1 CFR 51.5(b)(2) requires that agencies incorporating material by reference discuss in the preamble of the final rule the ways that the material it incorporates by reference is reasonably available to interested parties and how interested parties can obtain the material.

[21] 87 FR 75955.

[22] Docket No. FAA–2022–1463.

[23] Extension of Comment Period, *Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference,* 88 FR 24 (Jan. 3, 2023).

[24] See section IV.A.2.i. of this preamble for a list of the ACS and PTS that will be incorporated by reference in new § 61.14.

TABLE 1—AMENDMENTS TO FAA REGULATIONS—Continued

14 CFR § affected	Summary of provision
61.157(e)	Revise areas of operation to align with the areas of operation in the ACS.
61.321(b)	Revise to require the proficiency check for an additional light-sport aircraft privilege to consist of the appropriate areas of operation contained in the applicable PTS.
61.419(b)	Revise to require the flight instructor to successfully complete a proficiency check consisting of the appropriate areas of operation contained in the applicable PTS for the additional category and class flight instructor privilege sought.
Appendix A to part 61	Add appendix A to aid applicants and evaluators in identifying which ACS or PTS they must utilize for the certificate and/or rating sought or proficiency check to administer.
63.39	Revise to IBR the Flight Engineer PTS and require an applicant for a flight engineer certificate to satisfactorily demonstrate the objectives in the areas of operation contained in the Flight Engineer PTS.
65.23(a)(1) and (2)	Revise the centralized IBR section in part 65 to include the Aircraft Dispatcher PTS and Parachute Rigger PTS.
65.59	Revise to require an aircraft dispatcher to satisfactorily demonstrate the objectives in the areas of operation specified in the Aircraft Dispatcher PTS.
65.115 and 65.119	Revise to require applicant to pass the oral and practical test by satisfactorily demonstrating the objectives in the areas of operation in the Parachute Rigger PTS applicable as appropriate to the respective certificate (*e.g.,* senior parachute rigger, master parachute rigger) and type rating sought.
65.123(b)	Revise to require an applicant seeking an additional type rating to satisfactorily demonstrate the objectives in the area of operation applicable to the type rating sought, as specified in the Parachute Rigger PTS.

1. Comments Concerning IBR

The FAA received a number of comments on the mechanism of IBR itself. These comments included enforcement questions, concerns about the FAA's justification for IBR, and apprehension with the timeliness and flexibility of the process. This section responds to concerns about IBR and provides additional explanation on IBR as set forth by the APA.

First, the FAA received several comments regarding the effects of this rulemaking on enforcement. Two individuals and the National Association of Flight Instructors (NAFI) expressed concern that incorporating the ACS and PTS by reference may subject an applicant who fails a task or receives an unsatisfactory on a practical test or that applicant's instructor to an enforcement action. Additionally, NAFI expressed concern that the regulatory nature of the ACS and PTS would leave flight instructors who provide an endorsement that an applicant has received and logged the appropriate training and is prepared for the practical test [25] vulnerable to an enforcement action should the applicant fail the practical test. Further, one commenter surmised that the regulatory nature of the ACS and PTS would result in a violated regulation when a designated pilot examiner improperly fails an applicant, resulting in an enforcement or higher legal action.

The Administrator does not currently bring enforcement actions against those persons who fail practical tests, and this final rule does not change such practice. Section 61.43, as amended by this rule, sets forth the general procedures for the practical test and defines successful completion of a practical test in terms of the tasks specified in the Areas of Operation contained in the applicable ACS or PTS. Similarly, §§ 61.57, 61.58, 61.321, and 61.419 set forth the requirements for the completion of certain proficiency checks (*i.e.,* completion of the areas of operation contained in the applicable ACS or PTS). The FAA regards these completion requirements as eligibility standards that allow an applicant to receive a certificate and/or rating (or obtain an endorsement for the privileges associated with completion of a proficiency check). Therefore, the only consequence for not successfully completing a specific task within an ACS or PTS as incorporated by reference would be ineligibility for a certificate and/or rating sought (or privileges accompanying a proficiency check). The applicant would simply not receive the certificate, rating, or privileges and would not be subject to an enforcement action only on the basis of unsatisfactory performance of the test or check.

The FAA further emphasizes that, for the same reasons, the regulatory nature of the ACS and PTS would not affect the responsibilities of a flight instructor who endorses an applicant for purposes of the practical test and that applicant later fails the practical test. Specifically, the FAA recognizes that an applicant could fail a practical test for many reasons that may not necessarily reflect upon the flight instructor, including stress, misunderstanding, or human error. However, the FAA has the authority to take appropriate action, including reexamining or reinspecting a certificate holder, to resolve questions as to the holder's ongoing competence or qualification to hold a certificate.[26]

Second, one commenter presented opposition to the incorporation by reference and believed the ACS and PTS documents should never carry the full force and effect of regulation. The commenter's reason is that ACS/PTS is vague, which is by design because it is a framework. The ACS/PTS is built to be adaptive to situations and scenarios and to evolve with the industry. Additionally, the commenter stated that the ACS and PTS are designed to allow for an evaluator's judgment, individualism, interpretations, and conclusions.

The FAA agrees that the ACS and PTS documents are meant to be adaptive and each practical test is to be tailored to the applicant based on the identified deficiencies of the knowledge test. However, the ACS contain tasks that must be performed to demonstrate an individual has met the standard of proficiency required to obtain an airman certificate or rating. As such, the ACS are regulatory, and IBR is the appropriate process to make them so.

In addition, commenters took issue with the general proposal to IBR the PTS and ACS documents, stating that there is a lack of sufficient justification for incorporating these documents by reference. The FAA holds the legal authority to utilize the mechanism of IBR as afforded by the APA. As previously discussed, under 49 U.S.C. 44703, the Administrator of the FAA possesses the authority to issue airman certificates when the Administrator finds after investigation that an individual is qualified for and able to perform the duties related to the

[25] See 14 CFR 61.39(a)(6).

[26] See 49 U.S.C. 44709.

position authorized by the certificate. The Administrator carries out this authority through 14 CFR parts 61, 63, and 65, which prescribe the requirements for airmen to obtain a certificate and/or rating. The Administrator ensures that an airman possesses the requisite knowledge and skill to obtain a certificate and/or rating through demonstration of tasks consisting of knowledge, risk management, and skill elements as set forth in the applicable ACS and PTS.

A rule [27] that has the force and effect of law (*i.e.,* one that imposes duties or obligations on regulated parties) constitutes a legislative rule that must be adopted in accordance with the notice and comment requirements of the Administrative Procedure Act (APA).[28] The tasks in the ACS and PTS are legislative rules because an individual must accomplish them to obtain an airman certificate. As such, under the APA, the regulated community must receive notice and the opportunity to comment on the standards. The FAA determined that IBR presents the most appropriate mechanism by which to bring the ACS and PTS into the regulations.[29] The 33 total ACS and PTS that accompanied the NPRM in the docket consist of many pages and include tables, notes, references, appendices, and technical material. Converting these standards into a format acceptable to print directly in the CFR would, first, draw upon considerable agency resources, second, result in a brand new presentation of material that could present usability challenges for the agency and regulated community, and, third, substantially increase the volume of material published in the **Federal Register** and CFR.[30] Therefore, the FAA adopts the 33 ACS and PTS through incorporation by reference, as proposed, and maintains that, for the reasons discussed, sufficient support exists for this rulemaking.

Some commenters claimed that the process for changing the ACS and PTS documents must be faster and more flexible than the rulemaking process will allow due to technological developments and innovative aviation advancements. Commenters, particularly powered-lift manufacturers and planned commercial operators, emphasized the need to nimbly update the ACS and PTS in a timely manner and suggested the publication of clear revision cycles, review and revision timelines, and standing RINs.[31]

The FAA acknowledges industry's concerns that the rulemaking process will prevent quick updates to the ACS and PTS.[32] Rulemaking will be required to revise any document incorporated by reference into the CFR. As the ACS and PTS contain requirements for obtaining an airman certificate or rating, rulemaking will prevent the agency from imposing new requirements on a regulated entity by mandating a new version of a document without adhering to the APA (*i.e.,* by not providing notice of the changes and an opportunity for comment). Essentially, because of the regulatory status of ACS and PTS, should the FAA want to add a task or element to an ACS or PTS, the regulated community would be given notice, have the opportunity to provide input on the addition, and have time to prepare accordingly for the change before effectivity. Given the technical nature of the ACS and PTS, the FAA intends to explore an expedited method for making required updates through the rulemaking process similar to the process used for airspace actions. For updates that are administrative in nature, the FAA may use direct final rules or interim final rules to make those types of non-substantive changes.[33]

2. Final Rule Amendments

The FAA's regulatory amendments to parts 61, 63, and 65 remain unchanged from the proposal.

i. Airman Certification Standards and Practical Test Standards Incorporated by Reference Into Part 61

Title 14 CFR part 61 sets forth the certification requirements for pilots and flight instructors. As previously stated, new centralized IBR § 61.14 lists the ACS and PTS incorporated by reference into part 61 pertaining to pilots and flight instructors. This section summarizes 15 ACS and 15 PTS [34] that require applicants to perform the tasks specified in the areas of operation for the airman certificate and/or rating sought, as applicable.[35] As noted previously, the FAA makes the ACS and PTS reasonably available for interested parties to view by providing free online public access to the FAA Training and Testing website at *www.faa.gov/training_testing.* Interested parties can also download the ACS and PTS free of charge at the provided web address. Additionally, the FAA developed an ACS companion guide for pilots providing guidance on certain non-regulatory and technical information previously published in the ACS.

Airman Certification Standards:

- FAA–S–ACS–2, Commercial Pilot for Powered-Lift Category Airman Certification Standards; November 2023.
  - This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for commercial pilot certification in the powered-lift category.
  - This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport and Heliport Operations; Hovering Maneuvers; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Navigation; Slow Flight and Stalls; Emergency Operations; High-Altitude Operations; Special Operations; and Postflight Procedures.
- FAA–S–ACS–3, Instrument Rating—Powered-Lift Airman Certification Standards; November 2023.
  - This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for private pilot certification in the instrument rating in the powered-lift category.

[27] As defined in 5 U.S.C. 551, a ''rule'' is ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency[.]''

[28] 5 U.S.C. 552(A), which states, ''except to the extent that a person has actual or timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the **Federal Register** and not so published.

[29] For the purpose 5 U.S.C. 552(a), matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.''

[30] The FAA notes that 1 CFR 51.7 states that an assumption exists that a publication produced by the same agency that is seeking its approval is inappropriate for incorporation by reference. However, the ACS and PTS overcame this assumption under the standards set forth in 1 CFR 51.7(b) due to the unique qualities described here.

[31] A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Regulatory and Deregulatory Actions.

[32] The FAA notes that it is unaware of any updates that were immediately required to respond to a safety concern or new technology. If the FAA determines that safety requires immediate action, the FAA will take the necessary steps within all available means to address that concern.

[33] *See* ACUS Recommendation 95.4, Jun. 15, 1995; ACUS Recommendation 2011–5, Dec. 8, 2011; and OMB Circular A–119, Jan. 27, 2016.

[34] The FAA added dates to the regulatory text for version and document identification. This date, November 2023, provides a specific identification month for the PTS and ACS.

[35] In accordance with 1 CFR 51.5(b)(3), an agency must summarize the material it incorporates by reference in the preamble of the final rule. Sections IV.A.2.ii. and iii. of this preamble summarize the material incorporated by reference in 14 CFR parts 63 and 65.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Air Traffic Control (ATC) Clearances and Procedures; Flight by Reference to Instruments; Navigation Systems; Instrument Approach Procedures; Emergency Operations; and Postflight Procedures.

• FAA–S–ACS–6C, Private Pilot for Airplane Category Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for the private pilot certification in airplane category, single-engine land and sea, and multiengine land and sea classes.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers and Ground Reference Maneuvers; Navigation; Slow Flight and Stalls; Basic Instrument Maneuvers; Emergency Operations; Multiengine Operations; Night Operations; and Postflight Procedures.

• FAA–S–ACS–7B, Commercial Pilot for Airplane Category Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for the commercial rating in the airplane category, single-engine land and sea, and multiengine land and sea classes.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers and Ground Reference Maneuvers; Navigation; Slow Flight and Stalls; High-Altitude Operations; Emergency Operations; Multiengine Operations; and Postflight Procedures.

• FAA–S–ACS–8C, Instrument Rating—Airplane Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for private pilot certification in the instrument rating in the airplane category.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Air Traffic Control (ATC) Clearances and Procedures; Flight by Reference to Instruments; Navigation Systems; Instrument Approach Procedures; Emergency Operations; and Postflight Procedures.

• FAA–S–ACS–11A, Airline Transport Pilot and Type Rating for Airplane Category Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for airline transport pilot and type rating certification in the airplane category.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Takeoffs and Landings; In-flight Maneuvers; Stall Prevention; Instrument Procedures; Emergency Operations; and Postflight Procedures.

• FAA–S–ACS–13, Private Pilot for Powered-Lift Category Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for private pilot certification in the powered-lift category.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport and Heliport Operations; Hovering Maneuvers; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Slow Flight and Stalls; Basic Instrument Maneuvers; Emergency Operations; Night Operations; and Postflight Procedures.

• FAA–S–ACS–14, Instrument Rating—Helicopter Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for the instrument rating helicopter.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Air Traffic Control (ATC) Clearances and Procedures; Flight by Reference to Instruments; Navigation Systems; Instrument Approach Procedures; Emergency Operations; and Postflight Procedures.

• FAA–S–ACS–15, Private Pilot for Rotorcraft Category Helicopter Rating Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for private pilot certification in the rotorcraft category helicopter rating.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport and Heliport Operations; Hovering Maneuvers; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Navigation; Emergency Operations; Night Operations; and Postflight Procedures.

• FAA–S–ACS–16, Commercial Pilot for Rotorcraft Category Helicopter Rating Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for a commercial pilot certification in the rotorcraft category helicopter rating.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport and Heliport Operations; Hovering Maneuvers; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Navigation; Emergency Operations; Special Operations; and Postflight Procedures.

• FAA–S–ACS–17, Airline Transport Pilot and Type Rating for Powered-Lift Category Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for airline transport pilot and type rating certification in the powered-lift category.

○ This ACS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Takeoffs and Departure Phase; In-flight Maneuvers; Instrument Procedures; Landings and Approaches to Landings; Emergency Operations; and Postflight Procedures.

• FAA–S–ACS–25, Flight Instructor for Airplane Category Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for the flight instructor certificate in the airplane category.

○ This ACS contains the following Areas of Operation: Fundamentals of Instructing; Technical Subject Areas; Preflight Preparation; Preflight Lesson on a Maneuver to be Performed in Flight; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landings, and Go-Arounds; Fundamentals of Flight; Performance and Ground Maneuvers, Slow Flight, Stalls, and Spins; Basic Instrument Maneuvers; Emergency Operations; Multiengine Operations; and Postflight Procedures.

• FAA–S–ACS–27, Flight Instructor for Powered-Lift Category Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency

standards for the flight instructor certificate in the powered-lift category.

○ This ACS contains the following Areas of Operation: Fundamentals of Instructing; Technical Subject Areas; Preflight Preparation; Preflight Lesson on a Maneuver to be Performed in Flight; Preflight Procedures; Airport and Heliport Operations; Hovering Maneuvers; Takeoffs, Landings, and Go-Arounds; Fundamentals of Flight; Performance Maneuvers; Ground Reference Maneuvers; Slow Flight and Stalls; Basic Instrument Maneuvers; Emergency Operations; Special Operations; and Postflight Procedures.

• FAA–S–ACS–28, Flight Instructor—Instrument Rating Powered-Lift Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for the flight instructor instrument rating in the powered-lift category.

○ This ACS contains the following Areas of Operation: Fundamentals of Instructing; Technical Subject Areas; Preflight Preparation; Preflight Lesson on a Maneuver to be Performed in Flight; Air Traffic Control Clearances and Procedures; Flight by Reference to Instruments; Navigation Aids; Instrument Approach procedures; Emergency Operations; and Postflight Procedure.

• FAA–S–ACS–29, Flight Instructor for Rotorcraft Category Helicopter Rating Airman Certification Standards; November 2023.

○ This ACS communicates the aeronautical knowledge, risk management, and flight proficiency standards for the flight instructor certificate in the rotorcraft category helicopter rating.

○ This ACS contains the following Areas of Operation: Fundamentals of Instructing; Technical Subject Areas; Preflight Preparation; Preflight Lesson on a Maneuver to be Performed in Flight; Preflight Procedures; Airport and Helicopter Operations; Hovering Maneuvers; Takeoffs, Landings, and Go-Arounds; Fundamentals of Flight; Performance Maneuvers, Emergency Operations; Special Operations; and Postflight Procedures.

Practical Test Standards:

• FAA–S–8081–3B, Recreational Pilot Practical Test Standards for Airplane Category and Rotorcraft Category; November 2023.

○ This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the recreational pilot practical tests for airplane, rotorcraft/helicopter, and rotorcraft/gyroplane.

○ This PTS contains the following Areas of Operation for Single-Engine Airplane: Preflight Preparation; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landing, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Slow Flight and Stalls; Emergency Operations; and Postflight Procedures.

○ This PTS contains the following Areas of Operation for Rotorcraft Helicopter: Preflight Preparation; Preflight Procedures; Airport and Heliport Operations; Hovering Maneuvers; Takeoffs, Landing, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Emergency Operations; and Postflight Procedures.

○ This PTS contains the following Areas of Operation for Rotorcraft Gyroplane: Preflight Preparation; Preflight Procedures; Airport Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Flight at Slow Airspeeds; Emergency Operations; and Postflight Procedures.

• FAA–S–8081–7C, Flight Instructor Practical Test Standards for Rotorcraft Category Gyroplane Rating; November 2023.

○ This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the flight instructor certification practical tests for the rotorcraft category, gyroplane class.

○ This PTS contains the following Areas of Operation: Fundamentals of Instructing; Technical Subjects; Preflight Preparation; Preflight Lesson on a Maneuver to be Performed in Flight; Preflight Procedures; Airport Operations; Takeoffs, Landings, and Go-Arounds; Fundamentals of Flight; Performance Maneuvers; Flight at Slow Airspeeds; Ground Reference Maneuvers; Emergency Operations; and Postflight Procedures.

• FAA–S–8081–8C, Flight Instructor Practical Test Standards for Glider Category; November 2023.

○ This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the flight instructor certification practical tests for the glider category.

○ This PTS contains the following Areas of Operation: Fundamentals of Instructing; Technical Subject Areas; Preflight Preparation; Preflight Lesson on a Maneuver to be Performed in Flight; Preflight Procedures; Airport and Gliderport Operations; Launches and Landings; Fundamentals of Flight; Performance Airspeeds; Soaring Techniques; Performance Maneuvers; Slow Flight, Stalls, and Spins; Emergency Operations; and Postflight Procedures.

• FAA–S–8081–9E, Flight Instructor Instrument Practical Test Standards for Airplane Rating and Helicopter Rating; November 2023.

○ This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the flight instructor certification practical tests for airplane and helicopter ratings.

○ This PTS contains the following Areas of Operation: Fundamentals of Instructing; Technical Subject Areas; Preflight Preparation; Preflight Lesson on a Maneuver to be Performed in Flight; Air Traffic Control Clearances and Procedures; Flight by Reference to Instruments; Navigation Aids; Instrument Approach Procedures; Emergency Operations; and Postflight Procedures.

• FAA–S–8081–15B, Private Pilot Practical Test Standards for Rotorcraft Category Gyroplane Rating; November 2023.

○ This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the private pilot practical test for the rotorcraft category, gyroplane class.

○ This PTS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuver, Ground Reference Maneuvers; Navigation; Flight at Slow Airspeeds; Emergency Operations; and Postflight Procedures.

• FAA–S–8081–16C, Commercial Pilot Practical Test Standards for Rotorcraft Category Gyroplane Rating; November 2023.

○ This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the commercial pilot practical test for the rotorcraft category gyroplane class.

○ This PTS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers, Navigation; Flight at Slow Airspeeds; Emergency Procedures; and Postflight Procedures.

- FAA–S–8081–17A, Private Pilot Practical Test Standards for Lighter-Than-Air Category; November 2023.
  - This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the private pilot certification practical tests for the lighter-than-air category, balloon and airship classes.
  - This PTS contains the following Areas of Operation for the Balloon class: Preflight Preparation; Preflight Procedures; Airport Operations; Launches and Landings; Performance Maneuvers; Navigation; Emergency Operations; and Postflight Procedures.
  - This PTS contains the following Areas of Operation for the Airship class: Preflight Preparation; Preflight Procedures; Airport Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Emergency Operations; and Postflight Procedures.
- FAA–S–8081–18A, Commercial Pilot Practical Test Standards for Lighter-Than-Air Category; November 2023.
  - This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the commercial pilot certification practical tests for the lighter-than-air category, balloon and airship classes.
  - This PTS contains the following Areas of Operation: Fundamentals of Instructing; Technical Subjects; Preflight Preparation; Preflight Lesson on a Maneuver to be Performed in Flight; Preflight Procedures; Airport Operations; Launches and Landings; Performance Maneuvers; Navigation; Emergency Operations; and Postflight Procedures.
- FAA–S–8081–20A, Airline Transport Pilot and Aircraft Type Rating Practical Test Standards for Rotorcraft Category Helicopter Rating; November 2023.
  - This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the airline transport pilot and type rating practical tests for helicopters.
  - This PTS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Takeoff and Departure Phase; Inflight Maneuvers; Instrument Procedures; Landings and Approaches to Landings; Normal and Abnormal Procedures; Emergency Procedures; and Postflight Procedures.
- FAA–S–8081–22A, Private Pilot Practical Test Standards for Glider Category; November 2023.
  - This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the private pilot certification practical test for the glider category.
  - This PTS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport and Gliderport Operations; Launches and Landings; Performance Airspeeds; Soaring Techniques; Performance Maneuvers; Navigation; Slow Flight and Stalls; Emergency Operations; and Postflight Procedures.
- FAA–S–8081–23B, Commercial Pilot Practical Test Standards for Glider Category; November 2023.
  - This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the commercial pilot certification practical test for the glider category.
  - This PTS contains the following Areas of Operation: Preflight Preparation; Preflight Procedures; Airport and Gliderport Operations; Launches and Landings; Performance Speeds; Soaring Techniques; Performance Maneuvers; Navigation; Slow Flight and Stalls; Emergency Operations; and Postflight Procedures.
- FAA–S–8081–29A, Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Airplane Category, Gyroplane Category, and Glider Category; November 2023.
  - This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the sport pilot practical tests and proficiency checks for the airplane, gyroplane, glider, and flight instructor.
  - This PTS contains the following Areas of Operation for Sport Pilot Airplane: Preflight Preparation; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Slow Flight and Stalls; Emergency Operations; and Postflight Procedures.
  - This PTS contains the following Areas of Operation for Sport Pilot Gyroplane: Preflight Preparation; Preflight Procedures; Airport Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Flight at Slow Airspeeds; Emergency Operations; and Postflight Procedures.
  - This PTS contains the following Areas of Operation for Sport Pilot Glider: Preflight Preparation; Preflight Procedures; Airport and Gliderport Operations; Launches and Landings; Performance Speeds; Soaring Techniques; Navigation; Slow Flight and Stalls; Emergency Operations; and Postflight Procedures.
  - This PTS contains the following Areas of Operation for Flight Instructor: Fundamentals of Instructing; Technical Subject Areas; and Preflight Lesson on a Maneuver to be Performed in Flight.
- FAA–S–8081–30A, Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Lighter-Than-Air Category; November 2023.
  - This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the sport pilot practical tests and proficiency checks for the airship, balloon, flight instructor.
  - This PTS contains the following Areas of Operation for Sport Pilot Airship: Preflight Preparation; Preflight Procedures; Airport Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Emergency Operations; and Postflight Procedures.
  - This PTS contains the following Areas of Operation for Sport Pilot Balloon: Preflight Preparation; Preflight Procedures; Airport Operations; Launches and Landings; Performance Maneuvers; Navigation; Emergency Operations; and Postflight Procedures.
  - This PTS contains the following Areas of Operation for Sport Pilot Flight Instructor: Fundamentals of Instructing; Technical Subject Areas; and Preflight Lesson on a Maneuver to be Performed in Flight.
- FAA–S–8081–31A, Sport Pilot and Sport Pilot Flight Instructor Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Category; November 2023.
  - This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the sport pilot practical tests and proficiency checks for the weight-shift-control, powered parachute, and flight instructor.
  - This PTS contains the following Areas of Operation for Sport Pilot Weight-Shift-Control: Preflight Preparation; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Slow

Flight and Stalls; Emergency Operations; and Postflight Procedures.

○ This PTS contains the following Areas of Operation for Sport Pilot Powered Parachute: Preflight Preparation; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Emergency Operations; and Postflight Procedures.

○ This PTS contains the following Areas of Operation for Sport Pilot Flight Instructor: Fundamentals of Instructing; Technical Subject Areas; and Preflight Lesson on a Maneuver to be Performed in Flight.

• FAA–S–8081–32A, Private Pilot Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Aircraft Category; November 2023.

○ This PTS establishes the aeronautical knowledge, special emphasis areas considered critical to flight safety, and proficiency standards for the private pilot practical tests for powered parachute and weight-shift-control.

○ This PTS contains the following Areas of Operation for Powered Parachute: Preflight Preparation; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuver; Ground Reference Maneuvers; Navigation; Emergency Operations; Night Operations; and Postflight Procedures.

○ This PTS contains the following Areas of Operation for Weight-Shift-Control Aircraft: Preflight Preparation; Preflight Procedures; Airport and Seaplane Base Operations; Takeoffs, Landings, and Go-Arounds; Performance Maneuvers; Ground Reference Maneuvers; Navigation; Slow Flight and Stalls; Emergency Operations; Night Operation; and Postflight Procedures.

Furthermore, the FAA adopts the proposed amendments pertaining to proficiency checks in 14 CFR part 61. As explained in the NPRM, proficiency checks include a type of review of a pilot's proficiency generally required to maintain existing privileges or to add privileges in the case of sport pilot certificates. A proficiency check differs from a practical test. However, evaluators refer to ACS and PTS when performing pilot proficiency checks. Therefore, the FAA adopts the proposed conforming amendments to the proficiency check requirements in part 61. Specifically, this final rule will require that instrument proficiency checks under § 61.57(d), PIC proficiency checks under § 61.58, and sport pilot proficiency checks under §§ 61.321 and 61.419 occur in accordance with the appropriate ACS or PTS, respectively, through minor revisions to the applicable section and cross-references to the centralized IBR section.

ii. Practical Test Standard Incorporated by Reference Into 14 CFR Part 63

Title 14 CFR part 63 contains the certification requirements for flight crewmembers other than pilots, specifically flight engineers. The standards contained in § 63.39(c) require an applicant for a flight engineer certificate with a class rating to pass a practical test in the class of airplane for which the applicant seeks a rating. Revision of § 63.39(a) conforms to the current practice and specifies that, to pass the practical test for a flight engineer certificate, an applicant must satisfactorily demonstrate the objectives in the areas of operation contained in the Flight Engineer PTS. The Flight Engineer PTS fashions the regulatory subject areas into areas of operation in the Flight Engineer PTS, which expands regulatory subject areas into tasks that list the required knowledge and skills appropriate to the area of operation.[36] Each task lists an objective, which consists of the important elements that an applicant must satisfactorily perform to demonstrate competency. Specifically, the objective includes what the applicant must be able to do, the conditions under which the task is to be performed, and the minimum acceptable standards of performance. As noted previously, the FAA makes the PTS reasonably available to interested parties to view by providing free online public access to the FAA Training and Testing website at *www.faa.gov/training_testing.* Interested parties can download the ACS and PTS free of charge at the provided web address.

iii. Practical Test Standards Incorporated by Reference Into Part 65

Part 65 contains the certification requirements for airmen other than flight crewmembers, including aircraft dispatchers and parachute riggers. Both aircraft dispatchers and parachute riggers must pass a practical test to obtain a certificate and/or rating.[37] Part 65 currently contains a centralized IBR section in § 65.23, which houses the Aviation Mechanic General, Airframe, and Powerplant Practical Test Standards and the Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standard; therefore, this final rule adds the Aircraft Dispatcher Practical Test Standards and Parachute Rigger Practical Test Standards to § 65.23. As noted previously, the FAA makes the PTS reasonably available to interested parties to view by providing free online public access to the FAA Training and Testing website at *www.faa.gov/training_testing.* Interested parties can download the ACS and PTS free of charge at the provided web address.

The standards contained in the IBR section at § 65.59 require an applicant for an aircraft dispatcher certificate to pass a practical test given by the Administrator with respect to any one type of large aircraft used in air carrier operations. Because the aircraft dispatcher practical test occurs in accordance with the Aircraft Dispatcher PTS, § 65.59 will direct compliance with the Aircraft Dispatcher PTS through a cross-reference to the centralized IBR section of § 65.23. The Aircraft Dispatcher PTS contains knowledge and skill tasks that an applicant must demonstrate to pass the practical test for an Aircraft Dispatcher certificate. Specifically, the Aircraft Dispatcher PTS contains areas of operation divided into tasks (*e.g.,* navigation and aircraft navigation systems, practical dispatch applications). Each task lists an objective, which consists of the elements that the applicant must perform satisfactorily to demonstrate competency. Specifically, the objective includes what the applicant must do, the conditions for performance of the task, and the minimum acceptable standards of performance.

Additionally, both a senior parachute rigger and a master parachute rigger must pass an oral and practical test for the issuance of a certificate; likewise, the addition of a type rating to a parachute rigger certificate (*i.e.,* seat, back, chest, and/or lap type rating) requires the certificated parachute rigger to pass a practical test.[38] The Parachute Rigger PTS governs (1) the oral and practical test for obtaining a senior parachute rigger certificate and master parachute rigger certificate and (2) the practical test for obtaining type ratings for seat, back, chest, and lap; therefore, §§ 65.115, 65.119, and 65.123(b) will direct compliance with the Parachute Rigger PTS through a cross-reference to

[36] For example, § 63.39(b)(1) requires the applicant to show that the applicant can satisfactorily perform preflight inspection. Preflight Inspection is implemented in the Flight Engineer PTS as area of operation II: Preflight Procedures, expanded into Task A: Preflight Inspection and Flight Deck Setup and Task B: Preflight Inspection—Exterior.

[37] 14 CFR 65.53(b)(4), 65.115, 65.119, and 65.123.

[38] 14 CFR 65.115, 65.119, 65.123(b).

the centralized IBR section of § 65.23. The Parachute Rigger PTS contains areas of operation (*e.g.,* packing parachutes, parachute operation, and care), which divide into tasks applicable to the certificate and/or rating sought. For example, a task only involved in a seat type rating is delineated as Packing Seat Type Parachute (Seat Type Rating). Each task lists an objective, which consists of the elements the applicant must satisfactorily perform to demonstrate competency. Specifically, the objective includes the ability tested, the conditions under which the applicant performs the task to demonstrate ability, and the minimum acceptable standards of performance. This final rule removes gender references within the aforementioned parachute rigger regulations.

This final rule also makes one related technical amendment in part 65. Currently, as previously stated, the centralized IBR section in part 65, § 65.23, houses both the Aviation Mechanic ACS and PTS. As originally implemented,[39] §§ 65.75 and 65.79 provided that until July 31, 2023, a mechanic applicant must pass a written test including the subject areas on the Mechanic PTS and pass an oral and practical test by demonstrating the prescribed proficiency in the assigned objectives for the subject areas contained in the Mechanic PTS. Effective August 1, 2023, these sections required the written, oral, and practical tests to include the knowledge, risk management, and skill elements, as applicable, set forth by the Mechanic ACS. While the Mechanic PTS was removed from §§ 65.75 and 65.79 upon the effective date of the ACS, the PTS remained in the centralized IBR section. Therefore, this final rule removes the Mechanic PTS from § 65.23 as it is no longer applicable.

B. Discussion of Comments Related to the ACS and PTS

As previously discussed, the FAA provided the draft ACS and PTS documents proposed to be incorporated by reference in the docket for the NPRM associated with this final rule.[40] The FAA received numerous comments on these proposed ACS and PTS. These comments included suggestions and remarks on groupings of ACS and PTS, as well as those specific to a single ACS/PTS. This section of the preamble addresses comments that the FAA considered but did not result in changes to the ACS and PTS and explains the FAA's reasoning for not adopting the changes as suggested or adopting a tangentially related revision related to a specific comment. The first section, Broad ACS Comments (section IV.B.1. of this preamble), responds to comments that are generic in nature to a group of ACS, whether by certificate level or category/class of aircraft. The second section, Specific ACS Comments (section IV.B.2. of this preamble), responds to comments intended to apply only to one ACS or PTS. The last section (section IV.B.3. of this preamble) discusses universally applicable comments noted by industry. For those comments that the FAA agreed with and therefore implemented the suggested change, see section IV.D of this preamble.

1. Broad ACS Comments

i. Airplane ACS

First, Flight Safety International (FSI) commented on the use of the term ''flight manual,'' noting that the FAA's statement in the powered-lift ACS introduction explains what the term means and suggesting the addition of a similar explanation in an introduction to the Airplane ACS.[41] The FAA notes that '' Use of the Term Flight Manual'' appears in the new Powered-Lift ACS introduction section to provide context needed to clarify that flight manual is synonymous language with powered-lift aircraft flight manual in order to facilitate the introduction of a novel aircraft. The generic term of flight manual was used for the powered-lift ACS in the absence of a specified regulatory term for the powered-lift flight manual as a result of rulemaking. The FAA did not implement this change to the Airplane and Rotorcraft ACS as it is already used throughout the CFR.[42]

One commenter suggested limiting preflight assessment in the Private, Commercial, and Flight Instructor Airplane ACS to only elements involving inspection of the aircraft without any elements related to human factors. The commenter stated that duplicated elements make the task unfocused and difficult to learn and assess. The FAA did not revise the ACS in this final rule as an applicant's assessment of the aircraft, airman, and environmental factors are all elements that could affect the safety of flight; therefore, an airman's ability to evaluate him/herself in relation to a flight is as compelling from a safety standpoint as assessing the aircraft and the weather.

Next, the ARAC ACS WG commented on tasks related to runway incursion. The ARAC ACS WG suggested adding a runway incursion avoidance Task in the Private and Commercial Airplane ACS in AOO III, Airplane and Seaplane Base Operations, to align with the dedicated task that exists in the Instructor Airplane ACS. The FAA recognizes the importance of testing of runway incursion avoidance and notes that this topic is included in the private and commercial airplane ACS throughout multiple tasks. Runway incursion avoidance will be tested in at least one of the required tasks. An example of this is AOO II Task C. Taxiing of the Commercial Pilot Airplane ACS, which requires the evaluator to determine that the applicant exhibits satisfactory knowledge, risk management, and skills associated with taxi operations, including runway incursion avoidance. The FAA's intention is to mitigate risk by having the instructor applicant demonstrate during the practical test how to deliver training on the elements and techniques for runway incursion avoidance. Once certificated, the instructor will train their students how to avoid runway incursions as an inherent element of providing training on taxiing, takeoffs, and landings. This training should minimize the amount of runway incursions in the future. As a result, the FAA did not create a separate task for runway incursion avoidance in these ACS.

Additionally, the ARAC ACS WG suggested moving the Runway Incursion Task found in the Instructor ACS, AOO II, Technical Subject Areas, to AOO VI, Airplane and Seaplane Base Operations. The FAA did not implement this change in the adopted ACS since evaluators already incorporate this required task in a plan of action.

One commenter suggested removing certain risk management elements in the Human Factors tasks from the Airplane ACS.[43] Specifically, the commenter supported the removal of ''Distractions, task prioritization, loss of situational awareness, or disorientation'' and ''Confirmation and expectation bias'' from the Human Factors Task, as the commenter believed they were vague. The FAA notes that the ACS is intended to communicate and demonstrate risk management as a continuous process that includes identification, assessment, and mitigation of task-specific hazards

[39] *Aviation Maintenance Technician Schools* interim final rule, 87 FR 31391 (May 24, 2022); *Aviation Maintenance Technician Schools* final rule, 88 FR 38391 (Jun. 14, 2023).

[40] FAA–2022–1463.

[41] FSI provided a similar suggestion in relation to the Helicopter ACS; the FAA declined to add an explanation to the Helicopter ACS regarding flight manuals for the same reasons provided herein.

[42] See 14 CFR 21.5, 91.9.

[43] The Human Factors task is set forth in AOO I, Task H in the Private and Commercial Airplane ACS and AOO II, Task A in the Flight Instructor Airplane ACS.

that create risk. The risk management element identifies the circumstantial issues that aviators must consider in association with a particular task. Furthermore, risk management sections in each ACS translate special emphasis items and abstract terms into specific behaviors relevant to each task. Human factors circumstantial issues have been identified by the National Transportation Safety Board (NTSB) incident and accident reports, which include distractions and expectation bias as factors.[44] Furthermore, risk management elements like distractions, task prioritization, loss of situational awareness, disorientation, and confirmation expectation bias are observable risk management behaviors that are required to be evaluated. The references identified within each task provide additional information on the objective and task elements, which includes FAA guidance documents. As such, the Human Factors task found in the Airplane ACS provides reference material that leads to the FAA Risk Management Handbook (FAA–H–8083–2, Pilot's Handbook or Aeronautical Knowledge, and Aeronautical Information Manual (AIM), which aligns with these ACS risk management elements.

Additionally, the commenter also recommended changing the risk element ''aeromedical and physiological issues'' to associate with the first knowledge element of the Human Factors Task—''Symptoms, recognition, causes, effects, and corrective actions associated with aeromedical and physiological issues.'' The commenter stated that this would allow the examiner the ability to select up to three sub-elements and ask the applicant to identify, assess, and mitigate the associated risks with those sub-elements. Currently, the ACS addresses the commenter's concern as examiners must select at least one knowledge element and a risk management element. This allows the examiner to ask the applicant to assess risk related to any knowledge element. The FAA did not make the requested changes to the risk management elements identified in the Airplane ACS Human Factors tasks for the reasons noted above.

The same commenter suggested that the Private, Commercial, and Flight Instructor Airplane ACS return to how slow flight was performed in the Flight Instructor Airplane PTS, as the commenter asserted that the ability to fly an airplane at its absolute minimum controllable airspeed proficiently is far more beneficial than merely avoiding the stall warning because ''pilots will get used to it.'' The commenter also stated that the new method of slow flight implicitly teaches pilots dependence on stall warning devices, which, for many airplanes, is highly inaccurate and advisory at best.

The FAA notes that Safety Alert for Operations (SAFO) 17009[45] identified loss of control in flight to be the leading cause of fatal general aviation accidents in the United States and commercial aviation worldwide. As a result, the prevention of loss of control in flight in general aviation was identified on the National Transportation Safety Board's (NTSB)[46] Most Wanted List of Safety Improvements for 2017. With the release of the Private Pilot—Airplane ACS in June 2016, the FAA revised the slow flight evaluation standard to reflect maneuvering without a stall warning (*e.g.,* aircraft buffet, stall horn, etc.). The FAA explained this change in SAFO 16010[47] as one approach to addressing loss of control in flight accidents in general aviation. One of the primary concerns was that because a pilot would no longer be evaluated while flying at slow speeds with the airplane near the critical angle of attack (AOA), that pilot would not be trained or proficient at maneuvering under these conditions or understand what happens beyond the stall warning. The FAA asserted in SAFO 16010 and maintains the position that a pilot is still expected to ''know and understand the aerodynamics behind how the airplane performs from the time the stall warning is activated to reaching a full stall.'' The FAA also suggested that the pilot can acquire this knowledge in ground training and further consolidate it in the airplane while practicing the Stall Task skills in the ACS. At the time of the publication of SAFO 17009, the FAA reviewed Slow Flight and Stalls AOOs to ensure the knowledge, risk management, and skill elements adequately capture what a pilot should know, consider, and do relative to each task. As a result of that review, the FAA revised the evaluation standards for certain tasks for the private pilot airplane and commercial pilot airplane practical tests. The FAA continues to adopt this rationale and did not implement the requested changes to the maneuvering during slow flight tasks to the Private, Commercial, or CFI Airplane ACS.

One commenter commented on several elements pertaining to electronic flight bags (EFB). First, the commenter suggested making the use of an EFB a separate knowledge element from route planning within the Preflight Preparation AOO since an EFB can be used in other planning calculations. The commenter also suggested removing EFB as a risk element since it is not a significant cause of accidents, incidents, or violations and removing it as a skill element since its use is implicit in S1, Use an electronic flight bag (EFB), if applicable. While the FAA understands the commenter's reasoning for wanting a separate knowledge element for EFB, the intention of the element is for the applicant to demonstrate the understanding of route planning using an EFB if available. The FAA maintains that use of an EFB is most appropriate in the risk and skill portions of the practical test because use of an EFB presents potential hazards. An applicant who supplies or uses an EFB might use it in a manner that can affect the safety of the flight, thereby necessitating training and testing on the skill necessary for its use and the inherent risk of its use. In addition, the skill elements pertaining to an EFB more broadly encompass all use of an EFB by the applicant for planning and navigation.

ii. Helicopter ACS

The FAA received several general comments to the Rotorcraft Category, Helicopter Class ACS that apply to more than one ACS (*i.e.,* suggested changes in the Private Helicopter would result in related changes in the Commercial Helicopter, which could, in turn, have implications for the Flight Instructor Helicopter ACS). This section summarizes and responds to the comments in a generalized fashion rather than duplicate explanations per specific ACS.

One commenter requested a change in the Vertical Takeoff and Landing Task under Hovering Maneuvers (AOO IV, Task A, in both the Private and Commercial Helicopter ACS) to specify the position maintained within 4 feet of a designated point should be with minimal aft movement rather than with no aft movement, as currently required. The commenter stated that it is unrealistic to require no aft movement during the Vertical Takeoff and Landing Task because the applicant may not be able to prevent the helicopter from

[44] See, for example, NTSB Reports: DCA22LA126, DCA18IA081, DCA06MA064.

[45] FAA SAFO 17009, Airman Certification Standards (ACS): Slow Flight and Stalls, May 30, 2017.

[46] NTSB 2017–2018 Most Wanted List of Transportation Safety Improvements, *https://www.ntsb.gov/Advocacy/mwl/Documents/2017-18/MWL-Brochure2017-18.pdf.*

[47] To avoid confusion the FAA has cancelled SAFO 16010, Maneuvering During Slow Flight in an Airplane, and replaced it with a more comprehensive discussion in SAFO 17009, Airman Certification Standards (ACS): Slow Flight and Stalls.

moving aft due to variable or gusty winds, particularly in a light training helicopter.

The FAA notes some components of the Hovering Maneuver, Vertical Takeoff and Landing task is a demonstration of directional control and maintaining a position over the intended hover area, which inherently includes rotor safety considerations. The tail rotor of some helicopters cannot be seen from the cabin, and it can be difficult to judge distance from obstructions. In addition, strong crosswinds and tailwinds may require the use of more tail rotor thrust to maintain directional control. A consideration to be evaluated prior to the flight portion of the practical test is to operate within the limitations of the RFM, as well as the applicant's personal minimums. Personal minimums are evaluated as part of the Preflight Preparation, Human Factors task. Operating within those parameters is a demonstration of risk-based decision making and should give the applicant opportunity to demonstrate mastery of the aircraft. As described in the ACS, evaluators assess the applicant's mastery for specified tasks. The failure to take prompt corrective action when tolerances are exceeded is an example of one typical area of unsatisfactory performance for disqualification of a task. The FAA did not implement this change in the adopted ACS and maintains no aft movement as the level of expected proficiency for the task to qualify for the certificate or rating and maintain the level of safety required in operations.

The same commenter stated the use of the term ''normal'' as it applies to the Normal Approach and Landing Task [48] is arbitrary and may vary given different conditions, obstacles, etc. Specifically, the commenter sought to replace the standard of normal approach angle and rate of closure with ''constant'' approach angle and rate of closure. However, the FAA notes that it uses the term ''normal'' intentionally to account for a range of conditions pilots may encounter. A descent angle is established to provide distinguishing differences between a shallow, normal, and steep approach. The Helicopter Flying Handbook, FAA–H–8083–21, which is listed as a reference for this particular task, describes a normal approach technique as using a descent angle between 7° and 12°, which provides an open range to capture what would be considered a ''normal'' maneuver.[49] This descent angle range of 5° captures the margin of error that can occur with slight variances in a person's normal approach visualized glide angle, but still falls within those parameters. Furthermore, the Helicopter Flying Handbook defines the differences in glide angles for a shallow approach at 3° to 5° and a steep approach at 13° to 15°.

Additionally, the commenter suggested revising an element [50] pertaining to determination of wind direction to remove the option of the use of visible wind direction indicators. The commenter stated that the element, as currently written, is superfluous. The FAA disagrees with the commenter's contention. Helicopters often land and take off from off-airport sites, which requires the pilot to determine wind direction using various means. The element simply provides the pilot the clear option to demonstrate competency determining wind direction with or without wind direction indicators.

The commenter also commented on an element within AOO VI (Performance Maneuvers), Task C: Autorotation with Turns in a Single-Engine Helicopter in both the Private and Commercial Helicopter ACS. Specifically, the commenter stated that the skill element that requires rolling out of the turn no lower than 300 feet above ground level (AGL) along the flight path to the selected landing area should be eliminated. The commenter asserted the element is arbitrary and unrealistic in some situations since training helicopters may begin the autorotation at 500 feet and would not roll out of the turn above 300 feet. The commenter stated that if the FAA felt elimination was not necessary, then the element should simply require roll out no lower than the start of the cyclic deceleration.

The FAA disagrees with the commenter's recommendation to eliminate or alternatively modify this skill element because a lower roll out altitude decision point increases the risk of helicopter accidents during training and practical tests. In response to helicopter autorotation training accidents, the FAA published Advisory Circular (AC) 61–140, *Autorotation Training,* (dated August 31, 2016) which discusses a study conducted by the FAA and the Joint Helicopter Safety Analysis Team regarding helicopter training accidents. The AC outlines several safety recommendations, including a 300 feet AGL decision check with helicopter maneuvering completed before that point and the helicopter properly aligned with the intended landing area. Given the Joint Helicopter Safety Analysis Team findings, the FAA finds the safety recommendation to complete all turns by 300 feet AGL will enhance safety during training and practical tests since this change reduces the tendency of the applicant to rush through the turn and compromise safety during the maneuver.

However, in light of the commenter's concern, and to enable pilots to rollout from turns no lower than 300 feet AGL, the FAA finds it necessary to increase the minimum entry altitude of the maneuver from 500 feet AGL to 700 feet AGL. Accordingly, the FAA amended appendix 3, Operational Requirements, Limitations, & Task Information for ''Autorotation with Turns in a Single-Engine Helicopter'' to reflect a minimum entry altitude of at least 700 feet AGL.

Next, FSI suggested moving the ''Taxiing with Wheel-type Landing Gear'' Task from the Hovering Maneuvers AOO to the Airport and Heliport Operations AOO. The FAA disagrees because an evaluator could ask an applicant who brings a helicopter with wheel-type landing gear to demonstrate the Taxiing with Wheel-type Landing Gear Task on the ground or perform a hover taxi, as well as other related Tasks in the Hovering Maneuvers AOO.

The ARAC ACS WG suggested that autorotation Tasks should not include a testing standard for accuracy of a selected designated point. However, the FAA expects an applicant to select and reach a designated point within a given tolerance as part of an autorotation during a practical test. By choosing the entry point and autorotating to a selected spot, the applicant demonstrates the skill to select and maneuver to a suitable landing point should an engine failure occur, much like a realistic scenario in the national airspace system (NAS).

Finally, the ARAC ACS WG noted that the Helicopter ACS use the terms IIMC or UIMC, which may lead the aviation industry to assume each term has a different meaning. The FAA notes it uses both terms, unintended flight in instrument meteorological conditions (UIMC) and inadvertent instrument meteorological conditions (IIMC) to describe flight in visual meteorological conditions (VMC) continued into

[48] The FAA revised the task name ''Normal Approach and Landing'' to ''Normal and Crosswind Approach'' pursuant to comments, as set forth in the Record of Changes in section IV.D., Table 3 of this preamble.

[49] FAA–H–8083–21, Helicopter Flying Handbook (2019), Chapter 9: Basic Flight Maneuvers, Approaches, Normal Approach to Hover (pp. 9–19).

[50] The FAA notes that these comments specifically reference AOO V, Task G in the Private Helicopter ACS and AOO V, Task B in the Commercial Helicopter ACS, but this element appears in numerous instances throughout all Helicopter ACS.

instrument meteorological conditions (IMC) without the intent to do so. Use of either or both terms can inform the public of how aviation agencies categorize this event. The FAA introduced UIMC in addition to IIMC in the Helicopter Flying Handbook. The FAA understands how confusion could arise and has, therefore, removed the word ''or'' from the affected ACS element and replaced it with a solidus symbol to read ''IIMC/UIMC'' to communicate the interchangeability of the phrases and acronyms.

iii. Powered-Lift ACS

While many commenters expressed appreciation to the FAA for publication of the six Powered-Lift ACS, commenters also noted perceived shortcomings to the Powered-Lift ACS as a whole. Most prominently, Embraer S.A., General Aviation Manufacturers Association (GAMA), Wisk Aero, and Lilium GmbH made similar comments regarding powered-lift and a vertical takeoff and landing (VTOL). The commenters urged the FAA to ensure the certification standards properly train and qualify airmen, while considering powered-lift's imminent entry into commercial operations. However, the commenters indicated that the Powered-Lift ACS series does not address the complexities of every type of VTOL, eVTOL, or powered-lift under development. For context, Lilium specifically provided an example that the required aircraft knowledge related to fuel, hydraulic, and pneumatic systems would not apply to the all-electric Lilium jet, which does not contain these components. As another example, Embraer also expressed concern that multiple tasks under the In-Flight Maneuvers AOO within the ATP/Type Rating Powered-Lift ACS and the High-Altitude Operations AOO within the Commercial Pilot for Powered-Lift ACS may not apply to all powered-lift types.

The FAA notes that it developed the Powered-Lift ACS with the understanding that these novel aircraft will possess varied systems and operating and handling characteristics such that a rigid airman certification framework would be difficult to implement. In other words, the FAA understands the flexibility required of the corresponding ACS for airman certification. For example, powered-lift may be precluded from certain tasks due to the powered-lift's design (*e.g.,* stalls or circling approaches) that would be required by the ACS. Conversely, a powered-lift may be able to perform a maneuver that was not contemplated by the ACS, as adopted in this final rule.

The FAA maintains that the six Powered-Lift ACS, as adopted in this final rule, provide an appropriate practical test foundation for the forthcoming powered-lift operations. GAMA echoed this sentiment in a comment, emphasizing that the documents provide a suitable initial set of standards. Additionally, Joby Aviation acknowledged that the ATP and Type Rating for Powered-Lift ACS are relatively flexible and adaptable to support new and novel technologies. The FAA notes that while industry and working groups provided extensive input and expertise on the Powered-Lift ACS, a degree of uncertainty remains regarding the addition of discrete tasks for certain powered-lift type ratings based on the powered-lift's unique characteristics. Should the Flight Standards Board Report (FSBR) and type certification process reveal any additional tasks not accounted for in the ACS but considered essential to the operation of the specific type of powered-lift, the FAA may set forth these tasks in a type-specific appendix to the ACS, subject to incorporation by reference in accordance with the APA.

On June 14, 2023, the FAA published the proposed rule, *Integration of Powered-Lift: Pilot Certification and Operations; Miscellaneous Amendments Related to Rotorcraft and Airplanes*.[51] This NPRM proposed certain flexibilities in consideration of the differing powered-lift characteristics related to type specific airman certification testing. Upon publication of the NPRM, stakeholders had an opportunity to submit public comments on the FAA's proposal, including these flexibilities. The FAA will consider all significant comments received on the powered-lift NPRM in the final rule and reconcile the powered-lift final rule (and necessary guidance) with this final rule, as appropriate. Once the FAA publishes the powered-lift final rule, the FAA will actively engage with stakeholders to develop or mitigate Tasks and publish guidance specific to differentiating powered-lift types as the FAA and industry work to achieve aircraft certification.

As it pertains to specific comment from Lilium and Joby, the FAA understands the use of the term ''fuel'' rather than the term ''energy'' could lead individuals to reach the conclusion that this term excludes electric propulsion systems. In a prior rulemaking, the FAA stated it did not intend to preclude the certification of electric propulsion systems or other non-fossil-fuel-based propulsion systems, such as provided by certain carbon-based fuels or electrical potential, and the FAA maintains that position now.[52] The term ''fuel systems'' also includes a means of storage for the electrical energy provided (*e.g.,* batteries that provide energy to an electric motor) or devices that generate energy for propulsion (*e.g.,* solar panels or fuel cells).[53] The FAA considers it appropriate to use the term ''engine'' for powered-lift electric motors and recognized this in the first special conditions for an electric engine in September 2021.[54]

Joby stated that elements with applicability qualifiers and references to appendix 3 of the ACS create redundancy and confusion. Specifically, a portion of appendix 3, Equipment Requirements & Limitations, states that an evaluator is expected to test the applicant's knowledge of the systems that are available or installed and operative during the ground and flight portions of the practical test. Joby stated this indicates a pilot should only be checked in accordance with the aircraft's equipment, but that certain applicability modifiers[55] used throughout the ACS introduce confusion by implying items without the modifier are required, even if the aircraft isn't equipped accordingly. Joby proposed the removal of all applicability language from the element and, instead, suggested reinforcement of the applicability of appendix 3 language to all elements.

The FAA did not remove applicability language in the adopted ACS. As previously discussed in this section, the FAA understands that some powered-lift will not be equipped with certain equipment that may be required in these foundational ACS, just as some equipment and elements in airplane and helicopter ACS are inapplicable to some airplanes and helicopter. Additionally, due to emerging technology and active aircraft certification projects, the FAA cannot determine which one statement would be applicable to all powered-lift aircraft and cannot address this issue without more input from stakeholders,

[51] 88 FR 38946.

[52] See *Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes* final rule, 81 FR 96572 (Dec. 30, 2016).

[53] For example, § 91.205(b)(9) refers to a ''[f]uel gauge indicating the quantity of fuel in each tank.'' In instances such as this, the fuel tank may refer to the electric battery that stores the energy.

[54] *Special conditions: magniX USA, Inc., magni350 and magni650 Model Engines; Electric Engine Airworthiness Standards* final special conditions, 86 FR 53508 (Sep. 27, 2021).

[55] Joby refers to phrases such as ''as applicable,'' ''if applicable,'' ''if equipped,'' ''if installed,'' ''if available,'' and ''as applicable,'' and similar language.

as intended through an aircraft's certification process and Flight Standards Board. These key processes will inform airman certification frameworks for each specific powered-lift type.

Next, Joby noted that the ACS documents should not introduce new requirements not found in part 61 without also modifying part 61. Joby cited a few examples, including aviation security concerns, required use of safety restraint systems, and passenger safety briefings. Joby stated that these items are already captured more broadly in Area of Operation I, Preflight Preparation, Task E, The Code of Federal Regulations. The FAA did not adopt Joby's recommendation. The FAA seeks to place elements in Tasks where they fit logically as part of an Area of Operation and Task and maintains transparency in knowledge and testing expectations through explicit elements. Specifically, because Areas of Operation in part 61 are extensive in scope and limited in detail, a Task or element might not be referenced in 14 CFR. The items identified by Joby are appropriate elements of preflight procedures, thus FAA has placed them in AOO II, Preflight Procedures, consistent with the same requirements in the airplane and rotorcraft ACS. Because IBR is a process by which content is made regulatory, these items have the same standing as the areas of operation listed in part 61.[56]

iv. Glider PTS

The ARAC ACS WG and Soaring Safety Foundation (SSF) provided a list of suggested changes to the Glider PTS. The FAA notes that several of the items suggested by the ARAC ACS WG and SSF simply set forth revisions without explanation, safety rationale, or data for the requested change. The FAA notes that many elements already encompass the commenters' suggested items.[57] Commenters also suggested amendment of many Fundamentals of Instructing (FOI) elements in the Glider Flight Instructor PTS to align with the Aviation Instructor's Handbook, which the FAA notes is listed as a reference. The Glider PTS is slated to transition to ACS in the future, and the agency may consider these items when collaborating with the ARAC ACS WG to draft the Glider ACS. To note, the FAA agreed with several suggestions and implemented corrections in the Glider PTS adopted with this final rule. These accepted changes are detailed in section IV.D of this preamble.

SSF suggested the addition of clearing procedures in all flight maneuver tasks in the Private, Commercial, and Flight Instructor Glider PTS. The FAA notes while only some Tasks may list that the applicant clears the area before a maneuver, the unsatisfactory performance section of the Glider PTS specifically discusses the failure to use proper and effective visual scanning techniques to clear the area before and while performing maneuvers. Because this is incorporated within the practical test via the appendix, the FAA does not see a need to add the specific element in each task. When the PTS transitions to the ACS, it may be more appropriate to delineate clearing the area as a skill task at that time.

Other SSF comments related to slips with or without the use of drag devices during the skill portion of the Slip to Landing Task. The FAA notes not all gliders have the capability to demonstrate a slip with drag devices extended. Therefore, the Slips to Landing task appropriately tests the airman's knowledge of slips with and without the use of drag devices. Only the skill element requires a slip without the use of drag devices. No justification or safety information was provided with the comment, and the FAA did not make a change.[58]

v. Commercial Pilot ACS

As part of FSI's comments encouraging the FAA to strive for uniformity within the various ACS and PTS, FSI noted inconsistencies pertaining to the Night Operations tasks among the Commercial ACS. Specifically, FSI noted that the Commercial Airplane ACS has no Night Operations task, while the Commercial Powered-Lift ACS has a designated Night Operations task under AOO I, Preflight Preparation, and the Commercial Rotorcraft-Helicopter ACS includes the Night Operations task under AOO IX, Special Operations. The FAA agrees that for uniformity among the ACS Commercial Pilot documents the Night Operations task for both Powered-Lift and Helicopter categories now appear in AOO I, Preflight Preparation. The helicopter and powered-lift aircraft conduct lower altitude operations and off-airport night operations into unprepared landing areas, which involve a higher degree of risk due to an increase in unpredictability compared to standard airport operations. As a result, the FAA included the Night Operations task in the Powered-Lift and Helicopter ACS and did not add it to the Commercial Airplane ACS.

vi. Instrument Rating and Flight Instructor—Instrument Rating ACS

The FAA proposed to incorporate by reference five ACS and PTS to obtain an instrument rating and/or an instrument instructor rating.[59] Similar to the helicopter comments, some commenters suggested revisions for one specific Instrument ACS or PTS that would apply to the entire series of instrument and flight instructor-instrument rating standards. This section summarizes those comments related to the Instrument ACS and PTS and responds accordingly.

First, one commenter stated that the Instrument Proficiency Check (IPC) Task table in the Instrument ACS appendix has no regulatory basis and inappropriately mandates a certain minimum number of Tasks within the corresponding AOOs mentioned in 14 CFR 61.57. The commenter further asserted that the addition of an IPC Task table with specific Tasks should not be part of the ACS/PTS IBR rule and should be a separate rulemaking process to allow comments on the FAA's selection of Tasks. The commenter suggested either (1) removing the IPC requirements from the ACS and issuing a subsequent rulemaking to address the topic of IPC requirements (with content added to AC 61–98 in the meantime) or

[56] If the FAA determined that a testing task was required to determine the pilot's proficiency, but that task did not properly fit under an existing area of operation, the FAA would revise the areas of operation in part 61 to accommodate the new testing task. The FAA most recently did this in the Operations of Small Unmanned Aircraft Systems over People final rule (86 FR 4314, Jan. 15, 2021) when it added night operations and operations over people to the list of knowledge areas for airman certification under part 107.

[57] For example, within the Commercial Glider PTS, the ARAC ACS WG suggested modification of the weather Task to include low-level wind shear conditions and techniques for avoiding them. The FAA notes that evaluators can cover this information when asking the applicant to explain hazards associated with flight in the vicinity of thunderstorms (item 3). As another example, the ARAC ACS WG suggested the addition of self-imposed medical stress in the Aeromedical Factors Task (AOO I, Task F). The FAA notes that item 1.g. (stress and fatigue) within Task F may encompass all types of stress, including self-imposed medical stress. Further, The ARAC ACS WG suggested adding Notices to Air Missions (NOTAMs) as an item in AOO VIII, Navigation, Task B, National Airspace System for the Private and Commercial PTS. The FAA notes that Task B (National Airspace System) in this AOO includes all necessary information for the applicant to function in the NAS and does not exclude NOTAMs.

[58] The SSF referenced an FAA Designee Update from January 2000 published by the FAA in their justification for changes to the PTS; however, the FAA is unable to locate the reference document and, therefore, is unable to determine the proposed wording change.

[59] Instrument Rating—Airplane, Instrument Rating—Helicopter, Instrument Rating—Powered-Lift; Flight Instructor Instrument—Airplane and Helicopter, Flight Instructor Instrument—Powered-Lift.

(2) reissuing the NPRM to solicit comments on the IPC requirements.

As previously explained, § 61.57(d), prior to this final rule, listed the specific AOOs for an IPC. In practice, these AOOs were also set forth in the applicable PTS or ACS with an accompanying task table. Therefore, in the NPRM, the FAA simply proposed to remove the specific AOOs from the regulation itself and, instead, provide a table within the applicable ACS in the appendix with the specific AOOs and tasks to be tested. The footprint of the IPC was neither expanded nor were additional AOOs and tasks added to the IPC ACS and PTS via the tasking table. In other words, the previously required minimum AOOs and Tasks for an IPC remain unchanged. Additionally, the FAA amended the regulatory text for § 61.57(d) to direct a person to the appropriate ACS to identify the requirements for an IPC. Within the appropriate ACS is an IPC task table that identifies the minimum required AOOs and tasks. This change incorporates language to specify the minimum requirements of an IPC, but also allows for additional tasks if the instructor deems it necessary to determine instrument proficiency.

To illustrate, pursuant to § 61.57(d) prior to this final rule, the IPC requirements included at least: air traffic control clearances and procedures, flight by reference to instruments, navigation systems, instrument approach procedures, emergency operations, and postflight procedures. In examining the IPC table in, for example, the Instrument Rating—Airplane ACS, the AOOs/Tasks correspond in the following manner:

TABLE 2—EXAMPLE COMPARISON OF IPC TASKS

Area of operation set forth by § 61.57(d)(1) prior to this final rule	Corresponding AOO/task in the instrument rating—Airplane ACS IPC table
§ 61.57(d)(1)(i): Air traffic control clearances and procedures.	AOO III (Air Traffic Control Clearances and Procedures), Task B: Holding Procedures in Air Traffic Control Clearances.
§ 61.57(d)(1)(ii): Flight by reference to instruments.	AOO IV (Flight by Reference to Instruments), Task B: Recovery from Unusual Flight Attitudes in Flight by Reference.
§ 61.57(d)(1)(iii): Navigation systems	AOO V (Navigation Systems), Task A: Intercepting and Tracking Navigational Systems and DME Arcs.
§ 61.57(d)(1)(iv): Instrument approach procedures.	AOO VI (Instrument Approach Procedures), All Tasks.
§ 61.57(d)(1)(v): Emergency operations	AOO VII (Emergency Operations), Task B: One Engine Inoperative (Simulated) during Straight-and-Level Flight and Turns; Task C: Instrument Approach and landing with an Inoperative Engine (Simulated); and Task D: Approach with Loss of Primary Flight Instrument Indicators.
§ 61.57(d)(1)(vi): Postflight procedures	AOO VIII (Postflight Procedures), All Tasks.

The commenter stated that the tasking table would transform the task table from strong guidance about what the FAA considers a representative set of tasks to affirmative regulations mandating the use of the task table, thereby decreasing a flight instructor's discretion in conducting the IPC. As illustrated in the table, the tasking table does narrow some of the AOOs; however, the evaluator retains discretion to select multiple knowledge and risk management elements within those tasks. Additionally, where the FAA narrowed the area of operation to a task, it does not change the parameters expected of the check. An evaluator would cover such tasks under § 61.57(d)(1) as written prior to this final rule and, therefore, the table does not add any additional requirements to the proficiency check.

Finally, to the extent that the commenter suggested the ACS and PTS documents were not an appropriate means to establish the IPC requirements, because an IPC is designed to ensure that a pilot has maintained the instrument skills required for initial certification, the FAA deems the ACS and PTS the appropriate mechanism to delineate the necessary tasks for an IPC. The FAA notes that this rulemaking extended an opportunity for the regulated community to provide comments related to any and all of the ACS and PTS, which included substantive comments on required tasks and content contained in the appendices.

Relatedly, the ARAC ACS WG commented that § 61.57(d) does not incorporate ACS–8, the Instrument Rating—Airplane ACS, by reference. Based on the comment provided, the FAA could not determine the rationale behind the ARAC ACS WG's perception. The language, as adopted by this final rule, requires that an IPC must include the AOOs contained in the applicable ACS, incorporated by reference by § 61.14 as listed in new appendix A to part 61 appropriate to the rating held. Appendix A to part 61 provides that the Instrument Rating—Airplane ACS, as set forth in § 61.14, applies to a person seeking an Instrument Proficiency Check—Airplane.

Further, the ARAC ACS WG commented on the required tasks set forth by the IPC table pertaining to AOO VI (Instrument Approach Procedures) stating that the IPC table should only require one non-precision approach and not require all tasks in the AOO, which effectively requires evaluation of two different non-precision approaches via Task A and the note regarding that task in appendix 3. As the FAA previously stated, an IPC is designed to ensure that a pilot has maintained the instrument skills required for initial certification. Additionally, it is possible a pilot could be non-current for many years, prior to fulfilling the IPC requirements. As a result, in the interest of safety, the FAA did not change the requirement.

Additionally, the ARAC ACS WG sought confirmation regarding a revision to Localizer Performance with Vertical guidance (LPV) approaches. Specifically, the ARAC ACS WG noted that the testing standard within the published Instrument Rating—Airplane ACS prior to this final rule (FAA–S–ACS–8B) considers the LPV approaches to be non-precision if the Decision Altitude (DA) is more than 300 feet and precision if the DA is less than 300 feet. The ARAC ACS WG stated that the Instrument Rating—Airplane ACS set forth with the NPRM to this final rule (FAA–S–ACS–8C) does not address LPV as in the past and sought confirmation as to whether this change was intentional. The FAA notes that it made this change intentionally to align the Instrument ACS with the criteria in Advisory Circular (AC) 90–107, *Guidance for Localizer Performance with Vertical Guidance and Localizer Performance without Vertical Guidance*

Approach Operations in the U.S. National Airspace System. Because a precision approach includes any approach flown to a DA with approved vertical guidance, the FAA removed the 300 feet height above touchdown (HAT) in all category Instrument ACS and the Flight Instructor—Instrument ACS, as criteria to determine whether an RNAV (RNP) or RNAV (GPS) approach with LPV published minimums could count as a precision approach during a practical test. Appendix 3: Aircraft, Equipment, and Operational Requirements & Limitations for Precision Approach, states that an applicant must accomplish a precision approach to the decision altitude (DA) using aircraft navigational equipment for centerline and vertical guidance and that precision approach is a standard instrument approach procedure to a published decision altitude using provided approved vertical guidance.

vii. Private Pilot PTS

One commenter suggested including elements in the Private Pilot PTS on the subject area of knowledge and proficiency in conducting a post-flight self-review. The commenter contended that post-flight self-checks are important for continued improvement and should include knowledge and proficiency in National Aeronautics and Space Administration (NASA) Aviation Safety Reports, NTSB accident reports, and how the FAA WINGS program can help applicants with improving and maintaining knowledge, skills, and proficiency. The FAA encourages pilots at all levels to continually evaluate their performance before, during, and after any flight operation, but notes that making a post-flight review part of the practical test could affect the post-flight task in all ACS and PTS documents. The FAA also describes a post-flight analysis in the Pilot's Handbook of Aeronautical Knowledge, FAA–H–8083–25, which states, ''when you have safely secured the airplane, take the time to review and analyze the flight as objectively as you can. Mistakes and judgment errors are inevitable; the most important thing is for you [pilot applicant] to recognize, analyze, and learn from them before your next flight.'' This does not prevent a pilot from using additional means of research and resources during their analysis. However, the FAA does not test an applicant's ability to conduct a post-flight self-evaluation at the conclusion of any practical test. The FAA requires the evaluator to perform a post-flight briefing of the applicant's performance.[60] Therefore, adding a standard for an applicant to conduct a post-flight self-assessment, review of aviation safety reporting, or search of the NTSB database would be superfluous to the responsibilities of an evaluator.

2. Specific ACS Comments

i. FAA–S–ACS–11A, ATP and Type Rating for Airplane ACS, November 2023

As part of FSI's broader notation that the ACS in general should align as much as possible in structure, content, layout, and tasks, FSI suggested a number of specific revisions to the ATP and Type Rating for Airplane ACS (referred to as the ATP Airplane ACS for purposes of this section) to encourage uniformity. First, FSI commented that the ATP Airplane ACS does not contain a Removal of VFR Type Rating table while the Powered-Lift ATP ACS does. The FAA notes that the Airplane ATP ACS includes a type rating limited to VFR table for a type rating practical test conducted in aircraft not capable of instrument flight. No table exists for testing to remove this specific limitation as the specific airplane type does not have IFR capability. On the contrary, powered-lift that are capable of instrument maneuvers and procedures present a situation that differs from other categories of aircraft because the FAA has not previously required a type rating for each type of aircraft that falls within a broad category of aircraft. Therefore, the Powered-Lift ATP ACS includes a VFR only table for the purposes of initial certification to coincide with the Powered-Lift NPRM (as previously discussed) that proposes a Special Federal Aviation Regulation (SFAR) for alternate eligibility requirements to safely certificate initial groups of powered-lift pilots. As a result, the ACS documents cannot succinctly align regarding the Removal of VFR Type Rating Table.

FSI also suggested adding flightdeck management to the Airplane ATP ACS for uniformity of content. The FAA notes that the ATP Airplane ACS currently encompasses the flightdeck management concept and includes it throughout the ACS. Examples of flightdeck management are: AOO II, Task C, K6, which requires applicants to demonstrate understanding of appropriate flightdeck activities prior to taxi and AOO I Task E, Air Carrier Operations, which requires applicants to exhibit the skill to apply crew resource management (CRM) principles in a crew environment. As a result, the FAA is not amending the Airplane ATP ACS, as the flightdeck management concept is already present.

One commenter asked for clarification in appendix 3 of the ATP Airplane ACS, specifically pertaining to AOO V., Stall Prevention. Within Tasks A, B, and C, the appendix states that when accomplished in a flight simulation training device (FSTD), stall entries should be consistent with the expected operational environment for a stall in cruise flight with no minimum entry altitude defined. The commenter inquired whether ''expected operational environment'' means something similar to a scenario-based event or actually performing the stall event at the location and operation of flight where the stall would occur (*e.g.,* from the landing configuration stall at the minimum descent altitude for a non-precision approach in IMC conditions). The FAA notes that air agencies and air carriers using FSTDs train stall recovery procedures using realistic scenarios that have no need to meet the altitude recovery limits that apply to practical tests conducted in an actual airplane. Therefore, the note in the appendix simply allows for scenario-based testing of the stall prevention task using an FSTD that mimics real world experiences in an operational environment (*e.g.,* weather, airspace, hazards, etc.) to meet the flight testing objectives without an altitude limitation. In other words, the evaluator should design the scenario such that the stall prevention occurs at a point that provides realistic testing.

The same commenter noted the ATP Airplane ACS appendix 3 contains information pertaining to a part 25 or § 23.3(d) commuter multiengine airplane. The commenter noted that 14 CFR 23.3 is an obsolete regulation. The FAA agrees; however, air carriers and operators still use aircraft certificated under the obsolete regulation and the statement applies to those aircraft. The FAA modified the sentence to clarify that these airplanes were certificated as commuter multiengine airplanes under 14 CFR part 23, historical § 23.3(d).[61]

[60] See FAA Order 8900.1, Volume 5, Chapter 2, Section 1, Paragraph 5–222.

[61] 14 CFR 23.3(d) provided that the commuter category is limited to multiengine airplanes that have a seating configuration, excluding pilot seats, of 19 or less, and a maximum certificated takeoff weight of 19,000 pounds or less. The commuter category operation is limited to any maneuver incident to normal flying, stalls (except whip stalls), and steep turns, in which the angle of bank is not more than 60 degrees. In 2016, part 23 was reorganized pursuant to the Small Airplane Revitalization Act of 2013 (Pub. L. 113–53, 49 U.S.C. 44704 note), resulting in the relocation and revision of § 23.3(d). See *Revision of Airworthiness*

Continued

A commenter suggested using ''must'' instead of ''shall'' in appendix 1 of the ATP Airplane ACS (which would result in a change to all ACS as boilerplate language). The FAA acknowledges that FAA Order 1000.36 (FAA Writing Standards) advises against the use of ''shall'' and recommends the use of ''must'' to impose requirements. The FAA retained the use of ''shall'' in this single instance and notes that it has the meaning set forth in 14 CFR 1.3.[62] Consistent with that meaning, its use constitutes a requirement for examiners.

ii. FAA–S–ACS–17, ATP and Type Rating for Powered-Lift ACS, November 2023

As previously noted, FSI suggested that the content of the ATP ACS for airplane, helicopter, and powered-lift should align as much as possible and, specifically, include second-in-command (SIC) in appendix 1 of the ATP and Type Rating for Powered-Lift ACS (referred to as the ATP Powered-Lift ACS for purposes of this section). While the FAA is in favor of uniformity where appropriate, in this case, the ACS are intentionally designed to be different. The Airline Transport Pilot and Type Rating for Airplane Category ACS specifically addresses a ''Second-In-Command Required'' Limitation that is specific to aircraft that allow for a pilot flight crew compliment of single or dual crew as required by § 61.43(b). This table is not applicable to powered-lift aircraft at this time and therefore not listed in appendix 1 of the ATP and Type Rating for Powered-Lift ACS.

FSI suggested the inclusion of an Air Carrier Operations Task in the ATP Powered-Lift ACS, specifically in AOO I (Preflight Preparation), stating that operators plan to use powered-lift in part 135 operations and most of the knowledge tasks apply to obtaining an ATP certificate in powered-lift. While the FAA understands FSI's reasoning for seeking addition of this task to the powered-lift ACS, the FAA first notes that the air carrier operations task was derived from Public Law 111–216, section 217, to apply to airplane multi-engine operations, specifically. Because the task is narrowly tailored to a different aircraft, the FAA requires additional operating information pertaining to powered-lift before analyzing the applicability of the task into the ATP Powered-Lift ACS. Additionally, powered-lift operations are not yet envisioned for part 121 air carriers. To mitigate the safety risk in part 135 operation, the FAA relies jointly on (1) practical testing with the use of the ACS and incorporation of part 135 regulations (*e.g.,* AOO I, Task E; AOO II, Task A) and (2) the approved part 135 training and checking programs, contemplated by the powered-lift NPRM and forthcoming final rule (as previously discussed). As industry expands into part 121 operations and the FAA garners the requisite information on powered-lift air carrier operations, the FAA may consider adding an Air Carrier Operations Task to the ATP Powered-Lift ACS similar to that in the ATP Airplane ACS.

The ARAC ACS WG commented that the Steep Approach Task and other Tasks specific to landing set forth in the ATP Powered-Lift ACS exist in the Private and Commercial Powered-Lift ACS, and the FAA should not test the same Tasks at the ATP and Type Rating level because it creates redundant testing. The FAA notes that there are some tasks throughout certificate levels that require duplicate testing. Due to the array of differing characteristics and capabilities of aircraft being pursued by industry, as well as pending airman certification pathways, the FAA continues to require these crucial approach and landing maneuvers in each respective certificate level at this time.

FSI made several discrete points suggesting the FAA reorganize the ATP Powered-Lift ACS to align with the ATP Airplane ACS or for preferred categorization under an AOO.[63] Some of these suggestions included removing AOO VI (Landings and Approaches to Landings), consolidating landing and hover tasks within AOO III (Takeoffs and Landings), and retitling requisite AOOs to mirror those ATP Airplane AOOs. The FAA notes this would require a substantial overhaul to include removing, consolidating, and reorganizing both AOOs, tasks, and elements. Changes of this nature would also require further revisions to regulatory text within § 61.157 to align the AOOs. The unique characteristics of airplanes, rotorcraft, and powered-lift, which differ as independent categories of aircraft, require varied AOOs and tasks for airman certification purposes. While the FAA recognizes a desire to have the ACS as uniform as possible across categories and classes of aircraft, the FAA does not find it feasible from an efficiency or safety perspective to overhaul the Powered-Lift ACS as proposed.

Joby remarked that some elements are inconsistent between the ATP Powered-Lift ACS and other ACS documents. Joby questioned why the battery used for propulsion element was only in the ATP Powered-Lift ACS. The FAA notes that the knowledge element ''*Battery(s) used for propulsion-charging, discharging, and condition, as applicable*'' is appropriate for testing at most levels of airman certification for powered-lift and, therefore, added it to the final Private, Commercial, and Flight Instructor ACS.[64] Adding this element provides the level of detail needed to adequately evaluate an applicant's knowledge of this unique topic as this relates to the necessity of electrical energy storage or devices that generate energy for propulsion specific to some powered-lift aircraft and otherwise would not be adequately examined prior to reaching the ATP certificate level. The FAA did not add this element to the Instrument or the Flight Instructor—Instrument ACS as those documents focus on aircraft systems related to instrument flight, as do the other Instrument ACS. In the building block approach to pilot certification, these items would be covered in prior testing (*e.g.,* at the private and/or commercial level).

Additionally, Joby also questioned why distractions, task prioritization, loss of situational awareness, and disorientation were excluded from several tasks. The FAA did not add the risk management element pertaining to the identification, assessment, and mitigation of distractions, task prioritization, loss of situational awareness, or disorientation to each risk management section of the ATP Powered-Lift ACS. The FAA intentionally assigned that element where appropriate throughout the ATP Powered-Lift ACS. The FAA does not use identical and redundant language in each risk management section in an effort to better highlight applicable elements related to distraction in context. This is done to tailor the possible risks to the task rather than facilitate redundancy. For example, some risk management elements include ''passenger distractions'' or ''division of attention.''

Furthermore, Joby also questioned whether ''coordinate with crew, as

Standards for Normal, Utility, Acrobatic, and Commuter Category Aircraft final rule, 81 FR 96572 (Dec. 30, 2016).

[62] Under FAA's rules of construction in 14 CFR 1.3, the term ''shall'' is used in the imperative sense meaning it is a directive or command.

[63] The FAA notes that FSI also made several suggestions to the commercial ACS with this same rationale. This section generally responds to the breadth of uniformity concerns.

[64] This element is in AOO I, Task G. Operation of Systems in the Private and Commercial Powered-Lift ACS and under AOO II, Task E. Flight Controls and Systems in the Flight Instructor ACS.

applicable,'' and ''use SRM or CRM, as appropriate'' were synonymous, as Joby noted inconsistency when one element appeared in some skills but both elements appeared in other skills. The FAA notes the skill element referred to in these tasks specify ''coordinate with crew, if applicable, and complete the appropriate checklist(s) in a timely manner'' and ''[u]se single-pilot resource management (SRM) or crew resource management (CRM), as appropriate.'' The FAA does not find these two skill elements are intended to be synonymous. The first skill element described is specific to the responsibility of checklist usage, while the following skill is specific to SRM or CRM principles, which includes the effective use of all available resources.

Finally, Joby suggested that AOO I, Preflight Preparation, Task E, The Code of Federal Regulations, should apply to all applicants for type ratings, not only be tested during ATP certificate tests. The FAA did not make this change, as the type rating test focuses more on the unique aspects of the specific aircraft type to ensure a person is qualified to act as PIC of that type of aircraft. Additionally, the FAA seeks to reduce redundancy of testing over basic elements. This matches the expectations set forth in the ATP and Type Rating Airplane ACS.

iii. FAA–S–ACS–2, Commercial Pilot for Rotorcraft Category Helicopter Rating ACS, November 2023

Members of the ARAC Helicopter ACS WG and U.S. Helicopter Safety Team collectively submitted comprehensive comments to the Commercial Pilot for Rotorcraft Category Helicopter Rating ACS, some of which were echoed by GAMA.[65] The group summarized their efforts to draft the helicopter ACS to include advancements in aircraft equipment and avionics and expressed concern that the drafts submitted to the FAA did not resemble the drafts that accompanied the NPRM. The FAA duly considered the group's comments and underscores its appreciation to the ARAC ACS WG for their work to continually improve and update the ACS in collaboration with the FAA. As explained in this section, the FAA did not implement some of the suggested changes. However, the table contained in section IV.D. of this preamble illustrates those changes that the FAA felt appropriate to make at this time.

One prominent comment by the group detailed the four additional maneuvers developed by the ARAC ACS WG for their draft commercial helicopter test to ensure the commercial test is more in-depth than the private test: (1) advanced autorotations, (2) flight solely by reference to instruments, (3) recovery from unusual attitudes, and (4) hover out-of-ground effect. The group acknowledged the FAA's addition of unusual attitude recoveries (AOO VII, Task L) as proposed in the FAA's draft ACS. The FAA notes that the Commercial Helicopter ACS adopted in this final rule includes the group's suggested task of flight solely by reference to instruments, as subsequently discussed. This section also contains discussion on the FAA's decision at this time to exclude the two remaining tasks.

Foreword and Appendices. First, the group noted that the foreword in the ACS gives little explanation about the ACS, which it considers significant because the majority of the helicopter community will be transitioning from the PTS testing format to the ACS. Additionally, the group noted that certain appendices have been eliminated, namely the References (formerly appendix 9) and Abbreviations and Acronyms (formerly appendix 10). The FAA did not eliminate this information but simply relocated it. Interested parties can find more information about the use of the ACS within the ACS Companion Guide for Pilots, as well as numerous resources provided by the FAA on the FAA's Airman Certification website.[66] Additionally, the Abbreviations and Acronyms appendix was relocated to section 6 of the ACS Companion Guide for Pilots, and conforming revisions were made within the ACS to ensure consistency in abbreviation and acronym usage. Further, rather than a single page of references for each ACS, the entire set of references moved to section 5 of the ACS Companion Guide for Pilots.

Area of Operation II (Preflight Procedures). The group stated that the skill element within Task D (Before Takeoff Check) requiring an applicant to maintain powerplant and main rotor speed (Nr) within normal limits is nonsensical because the aircraft is not flying during this Task. The FAA notes the Task requires the applicant to first perform the ''Complete the appropriate checklist(s)'' skill element, which includes setting and maintaining the power and main rotor speed within normal limits per the manufacturer's POH or RFM, prior to the helicopter becoming airborne. Therefore, this skill element is feasible for pre-takeoff activity, and the FAA kept the skill element. Helicopters may maintain power and rotor speed in different ways while on the ground and prior to takeoff. In some aircraft, the pilot manages the powerplant and main rotor speed operational limits through throttle manipulation. Some manufacturers will require the pilot to increase throttle to the normal operational range and manually maintain those parameters. Some helicopter manufacturers' ''before takeoff checklists'' include the pilot setting the throttle to the normal operating position and then the aircraft maintains the normal operating limitations while the pilot monitors those parameters in the event conditions require intervention. As part of the before takeoff sequence, pilot responsibility includes maintaining the powerplant and main rotor speeds within the normal operating limits regardless of the design features of the helicopter. Further, the inadequate management of powerplant and main rotor normal operating limits prior to takeoff could result in aircraft damage (*i.e.,* powerplant and main rotor overspeed).

Area of Operation IV (Hovering Maneuvers). The group suggested that various hovering maneuvers should exclude the requirement for an applicant to complete the appropriate checklist because there are hovering maneuvers where checklists do not exist. The group stated that, in turn, this makes the skill superfluous and broad. The FAA retained the skill element of completing the appropriate checklist in the adopted ACS since a practical test determines an applicant possesses the skill to perform all Tasks without missing critical steps. The FAA recognizes that, in certain situations, the helicopter pilot may not have time to review the checklist immediately due to the complexity of the helicopter or the maneuver, or a checklist may not correspond to a particular maneuver in real operations. For this reason, the ACS uses the modifier ''appropriate'' within the skill element.

Area of Operation V (Takeoffs, Landings, and Go-Arounds). The group noted that the FAA used the title ''Maximum Performance Takeoff and Climb'' rather than ''Advanced Takeoff Profile and Climb,'' as set forth in the group's draft. The group stated that

[65] The group, which includes the ARAC Helicopter ACS WG, U.S. Helicopter Safety Team, and GAMA, noted that their comments highlight only the Commercial Pilot Rotorcraft Category, Helicopter Class ACS, but that many of their comments could apply to the Private Pilot Rotorcraft Category, Helicopter Class ACS as well. Because the comments specifically addressed the Commercial ACS, the FAA responded to the comments in the commercial context.

[66] Airman Certification Standards | Federal Aviation Administration (*faa.gov*).

maximum power is not required and the Helicopter Flying Handbook allows for different climb profiles, which seems better embodied by the title set forth by the group. The FAA notes that the skill elements within this Task do not require the applicant to use maximum power, but the takeoff power necessary, or power as specified by the evaluator to maximize the takeoff performance and safely complete the Task. Pilots must take operational considerations into account to minimize the risk of exposure in the H/V diagram when clearing obstacles. The FAA did not implement the change to the term ''advanced'' as this may minimize the risk that applies to similar Tasks and the FAA kept the Task title as published in the NPRM.

Area of Operation VI (Performance Maneuvers). First, the group noted that a study conducted by the U.S. Helicopter Safety Team reported that 30% of helicopter training accidents occur in practice autorotations. Therefore, the group emphasized that the FAA should adequately update and address corresponding autorotation training in the Helicopter ACS, whether in the tasks themselves or in the appendices. The group stated that elements within the Straight-In Autorotation in a Single Engine Helicopter require refinement for safety purposes. Specifically, the group noted that the Helicopter Flight Manual defines a straight-in autorotation as not having any turns; however, the elements under this task imply turns are necessary to avoid undershooting or overshooting. The group urged the FAA to correct this inconsistency by revising the title of the Task to ''Basic Autorotation'' and eliminating certain turning and accuracy skills.

The FAA agrees that AOO VI, Performance Maneuvers, Task B,. Straight-In Autorotations in a Single-Engine Helicopter, describes an autorotation made from altitude with no turns. The Helicopter Flying Handbook includes several factors that affect the rate of descent in autorotations, including bank angle, density altitude, gross weight, rotor RPM, trim condition, and airspeed. It further details the primary ways to control the rate of descent including airspeed and rotor RPM.[67] The term ''maneuver'' may refer to banking or turning and would also include pitch attitude adjustments for airspeed changes to avoid undershooting or overshooting. The FAA agrees that straight-in autorotation entry location and altitude should set task tolerances so the applicant can arrive at the chosen termination point without requiring turning techniques. For clarity, the FAA changed the skill element to remove the word ''maneuver,'' and replaced it with the language proposed in the ARAC ACS WG's Commercial Helicopter draft that stated, ''Compensate for wind speed and direction as necessary to avoid undershooting or overshooting the selected landing area.'' The FAA applied this change to the Private Pilot and Flight Instructor Helicopter ACS for consistency. Further, the FAA maintains the term Straight-in Autorotation describes the autorotation set forth by the elements within the Task most accurately and did not adopt the change to the task name as suggested.

Next, the ARAC ACS WG stated that the Autorotation with Turn Task should test an applicant's ability to make an autorotation with a 90-to-180-degree turn. The group asserted that, while the Helicopter Flying Handbook and ACS as proposed with the NPRM uses the term ''Autorotation with Turn,'' the Handbook defines the most common turns in an autorotation as 90 degrees and 180 degrees. The group notes that ACS proposed in the NPRM requires a turn of 180°, not 170° or 160°, which would be within the parameters of the Handbook's definition of most common autorotation. The group stated that a larger margin is necessary where the Handbook provides a broader range of common autorotations, especially to account for crosswind or ATC corrections and considerations.

The FAA disagrees and notes the applicant may demonstrate an autorotation with turns with either two 90-degree turns in the same direction or one continuous turn of 180 degrees. The Helicopter Flying Handbook generally states the most common types of autorotations as 90-degrees and 180-degrees in the context of two turning options but describes the technique with a 180-degree turn.[68] The FAA expects the applicant to demonstrate the ability to turn the helicopter and complete the maneuver on a reciprocal track from the entry direction. This allows for wind corrections or other considerations to align the helicopter with the intended track to the landing area. To provide clarity, the FAA removed the note from the Autorotation with Turns Task and revised the corresponding language in appendix 3 of the ACS (as well as in the Private Pilot and Flight Instructor Helicopter ACS, where this issue would also apply). The ACS appendix 3 language explains that the 180-degree turn refers to a change in direction with respect to ground track, and not an exact reciprocal heading, which should account for the group's concerns regarding variations in the exact amount of turning on this task.

Next, the group expressed concern that certain tasks pertaining to autorotations are only tested for those persons who bring a single-engine helicopter to the practical test. The group commented that, if an applicant brings a multiengine helicopter to the practical test, they should have trained and tested autorotations in a multiengine helicopter. The group compared the requisite civilian training with that of the United States Army, explaining that military primary training requires power recovery autorotations in the twin engine UH–72.

The FAA notes that autorotations in multiengine helicopters present unnecessary risk. Civilian pilots do not perform autorotations in multiengine helicopters during practical tests due to the powerplant redundancy and the remote likelihood of a dual engine failure in civilian operations. The FAA applies similar logic in multiengine airplane practical testing, where an applicant is not required to simulate failure of all engines. While the FAA does not differentiate between single and multiengine helicopter class, because the autorotation tasks are an integral piece of the practical test and will not be performed in a multiengine helicopter, an applicant who does bring a multiengine helicopter for a practical test would be required to provide a single-engine helicopter to demonstrate the autorotation Tasks, as detailed in appendix 3 of the Helicopter ACS.

The ARAC ACS WG commented that the FAA did not add the group's suggested Advanced Autorotation Task to the Commercial Pilot Helicopter ACS. The ARAC ACS WG noted that they referenced Special Federal Aviation Regulation (SFAR) No. 73,[69] enhanced training in autorotation procedures flight training requirement to create their proposed enhanced autorotations Task. The group explained that the Task, titled Advanced Autorotation, would incorporate the ability to use a variety of techniques to maneuver the helicopter in an autorotation to a specific landing area. The FAA notes

[67] FAA–H–8083–21B, Helicopter Flying Handbook (2019), Chapter 11: Helicopter Emergences and Hazards (p. 11–2).

[68] FAA–H–8083–21B, Helicopter Flying Handbook (2019), Chapter 11: Helicopter Emergences and Hazards (p. 11–6).

[69] SFAR No. 73 was adopted in 1995 (60 FR 11254) to establish special training and experience requirements for pilots operating the Robinson model R–22 and R–44 helicopters in response to the number of accidents involving these models.

SFAR No. 73 requires specific pilot training, in addition to the requirements of part 61, to respond to the high number of accidents involving Robinson model R–22 and R–44 helicopters. However, the FAA does not purport to write testing standards for airman certificates and ratings for a specific make and model of aircraft. Furthermore, elements from the advanced autorotation concept are inherently incorporated into AOO VIII., Emergency Operations, Task B. Powerplant Failure at Altitude in a Single-Engine Helicopter. This task includes skill elements such as maneuvering to avoid undershooting or overshooting the selected landing area, which encompasses autorotation airspeed and rotor RPM combinations as dictated in the RFM for the aircraft used and can include varying bank angle. Therefore, the FAA did not add the Advanced Autorotation task at this time.

Area of Operation VIII (Emergency Operations). As previously mentioned, the group proposed to include additional Tasks in the draft ACS submitted to the FAA. Specifically, the group stressed that inadvertent IMC accidents are a major cause of helicopter fatalities and developed two corresponding Tasks to include in the Commercial level ACS: (1) Flight Solely by Reference to Instruments and (2) Recovery from Unusual Flight Attitudes. The Commercial ACS accompanying the NPRM only included the Recovery from Unusual Flight Attitudes Task, which the group noted was nonsensical to include, given the exclusion of the Flight Solely by Reference to Instruments Task. The group described a safety concern where an evaluator may ask the applicant to perform an unusual attitude recovery without knowing if the applicant could even fly straight and level under the hood.

Upon review, the FAA agrees with the group regarding the relationship between the Flight Solely by Reference to Instruments Task and the Recovery from Unusual Flight Attitudes Task and added the Flight Solely by Reference to Instruments Task to the Commercial Helicopter ACS (as well as the Flight Instructor Helicopter ACS). The FAA concurs that this Task allows evaluators an opportunity to assess an applicant's ability to control the helicopter by reference to instruments before the demonstration of the recovery from unusual flight attitudes Task. The Task provides a safety benefit for those applicants demonstrating the recovery and results in a de minimis addition to the practical test such that it would not substantially expand the envelope of the training and testing.

Miscellaneous. Finally, the group commented that the FAA should have included a Hovering Out of Ground Effect (OGE) Task, developed by the group, for the Commercial Helicopter ACS. The group supported this contention by explaining that commercial pilots generally need to hover OGE in commercial operations, are not taught or tested how to do it, and end up teaching themselves the requisite skills. The group also stated that the importance of performance planning, potential risks, and specific techniques for this maneuver are lost. The group stated that this maneuver occurs in commercial operations, which would indicate that an operator or air carrier could include it in an approved training program, where training tailored for a specific operation may occur. The FAA notes that AOO I, Preflight Preparation, Task F, Performance and Limitations, covers the type of performance planning that would apply to OGE hover. As a result, the FAA would rely on this task, as well as the part 121 and/or 135 approved training programs, to cover this, and did not include this task in the Commercial Helicopter ACS.

iv. FAA–S–8081–18A, Commercial Pilot PTS for Lighter-Than-Air Category, November 2023

One commenter recommended two revisions to the Commercial Pilot PTS for LTA Balloon. Specifically, within AOO VIII, Performance Maneuvers, the commenter questioned why Task F, High Altitude Flight (LBG),[70] only applies to gas balloons (as indicated by the parenthetical LBG within the ACS) since balloons with airborne heaters (''hot air balloons'') can also achieve high altitudes. The commenter further supported the expansion of Task G, Obstacle Avoidance (LBH), and Task H, Tethering (LBH), from balloons with airborne heaters to gas balloons since those types of balloons also avoid obstacles and tether.

The FAA notes that balloon pilot certificates are issued with a limitation for either airborne heater or gas.[71] Traditionally, gas balloons operate at altitudes above most obstacles, while balloons with airborne heaters typically operate closer to terrain. Gas balloons tether as a part of the inflation process, which is captured in AOO V, Task E Inflation, unlike balloons with airborne heaters, where they tether for the purpose of multiple ascents and descents. Therefore, due to the low occurrence of obstacle avoidance and tethering functions in gas balloons, the FAA sees no reason to expand these testing areas to gas balloons. Likewise, while the FAA tests the high-altitude task for gas balloons only, the FAA notes that pilots may fly balloons with airborne heaters at high altitudes. The elements of high-altitude flight for balloons with airborne heat is captured in the AOO III in Preflight Preparation, and AOO VIII, Task J Mountain Flying. The FAA finds, given the predominant operational footprints for gas balloons and balloons with airborne heaters, expanding these testing areas to all balloon applicants is not necessary to determine the proficiency to act as PIC.

v. FAA–S–ACS–25, Flight Instructor for Airplane Category ACS, November 2023

One commenter stated that weather knowledge and understanding is poor among many pilots, including flight instructors, and it is vital for safety for pilots to adequately understand this subject area. The commenter specifically noted that the Flight Instructor Airplane ACS requires the evaluator to select only three sub-elements from K2 or three sub-elements from K3 within AOO III, Preflight Preparation, Task C, Weather Information.[72] The commenter recommended an increase of elements for K2 to include all sub-elements and for K3 to include at least 5 sub-elements. The FAA notes it did not change the requirements within this Task because the sub-elements simply set a minimum standard that the evaluator must select ''at least'' three sub-elements. Evaluators should ask more than the minimum weather elements if needed to determine that the applicant possesses the required knowledge pertaining to weather information within the AOO. This minimum requirement does not restrict the evaluator from selecting additional elements but rather provides flexibility when an applicant demonstrates satisfactory knowledge of that Task. Additionally, evaluators may question applicants on weather information

[70] LBG stands for Lighter-Than-Air, Balloon (Gas); LBH stands for Lighter-Than-Air, Balloon (with Airborne Heater).

[71] See 14 CFR 61.115 and 61.133(b). For both the private and commercial certificate level, the limitation may be removed when the person obtains the required aeronautical experience in the balloon comprising the limitation and receives a logbook endorsement from an authorized instructor attesting to the accomplishment of such experience and ability to satisfactorily operate that sort of balloon.

[72] For reference, AI.III.C.K2 is acceptable weather products and resources required for preflight planning, current and forecast weather for departure, en route, and arrival phases of flight; AI.III.C.K3 is meteorology applicable to the departure, en route, alternate, and destination under VFR in VMC, including expected climate and hazardous conditions.

during various Tasks throughout the ACS (*e.g.,* National Airspace System within Technical Subject Areas, Preflight Assessment within Preflight Procedures) to ensure that an applicant possesses the requisite knowledge and skill pertaining to weather information outside of those sub-elements within the singular Task C.

One commenter suggested removing many of the risk management elements in the Fundamentals of Instructing (FOI) AOO of the Flight Instructor Airplane ACS (AOO I), stating that Task F, Elements of Effective Teaching that Include Risk Management and Accident Prevention, sufficiently covers all risk management for this AOO.[73] Additionally, the commenter suggested revising the skill elements in the FOI AOO to set forth a single skill element for each of the six FOI Tasks. The FAA notes the risk management elements outside of Task F, which include tasks associated with human behavior and communication, the learning process, course development, and student assessment, remain unchanged from the proposed ACS. These risk management areas associated with the other Tasks are necessary to evaluate the overall effectiveness of an instructor. Additionally, the FAA did not combine any skill elements within the FOI AOO in the adopted final draft of the ACS due to the itemization of testing codes, which the FAA discusses further in section IV.C. of this preamble.

The ARAC ACS WG commented that all tasks and elements should be focused on teaching and application of FOI. Specifically, the group stated that some of the tasks have skill elements that state ''deliver instruction,'' others say ''teach,'' others have neither, and the FAA should revise for consistency throughout. The groups suggested revising the stem of the skill elements to state that the applicant demonstrates the ability to either (1) deliver instruction ''by teaching how to:'' or (2) ''apply learning theories, communication techniques, teaching methods, and learning assessment while:'' and then list the skill elements and revise as needed to complete the statement. The FAA notes that a Flight Instructor ACS generally uses skill lead-ins that include demonstration and explanation as opposed to performance alone. However, in certain cases, if skill elements specifically mention teaching or demonstration, the FAA chose a shorter lead-in to avoid redundancy. For example, one skill element AOO X, Task G, Elevator Trim Stall Demonstration uses the lead-in, ''The applicant exhibits the skill to: describe and demonstrate conditions that lead to an elevator trim stall for future avoidance.'' If using the common instructor skill lead-in, the skill would read, ''The applicant demonstrates and simultaneously explains how to: describe and demonstrate conditions that lead to an elevator trim stall for future avoidance.'' As indicated above, the FAA believes that this suggestion is already incorporated in the ACS document and no further modifications are needed.

The ARAC ACS WG suggested limiting demonstration of flight characteristics at various configurations and airspeeds (AOO X, Task B) to ASEL and ASES aircraft only because the task elements were not created to mimic the demonstration of effects of various airspeeds and configurations during one-engine inoperative performance (AOO XII, Task C), which is only applicable to AMEL and AMES. The FAA agrees with the ARAC ACS WG's rationale, and the ACS adopted with this final rule reflects AOO X, Task B, as applicable to ASEL and ASES only.[74] Specifically, the FAA adjusted a global note, which sets forth the Tasks required to be tested in AOO X, to remove Task B as a requirement for multiengine applicants. As an outgrowth of this adjustment, the FAA added skill sub-elements to the corresponding multiengine skill element referenced by the ARAC ACS WG (*i.e.,* Task C of AOO XIII) to communicate the expectations for demonstrating smooth control inputs when transitioning between various airspeeds and configurations.[75]

The ARAC ACS WG requested revisions to § 61.187 (specifically, § 61.187(b)(1) and (2)) to exactly align this regulation with the AOOs in the ACS. The FAA did not revise § 61.187(b) in this final rule. For efficiency, the ACS combined the performance maneuver and ground reference AOOs in § 61.187 and the multiengine operations appears in the ACS generally (with a designator that the Tasks within the AOO apply only to multiengine practical tests), rather than separate ACS per class of airplane. Because the ACS applies to both single-engine (§ 61.187(b)(1)) and multiengine (§ 61.187(b)(2)), the ACS account for both sets of AOOs in cohesion with the regulations.

The ARAC ACS WG commented that the use of the asterisk in the added rating tables was not clear, and the FAA should use ''ALL'' in its place. The FAA disagrees, as use of the word ''ALL'' implies that the applicant would complete all the Tasks in the area of operation in the Instructor—Airplane ACS, which would exceed the Tasks required for the initial rating. The asterisk requires the evaluator to apply at least the required number of Tasks as listed in the Flight Instructor Airplane ACS for an added rating as those required for an initial instructor—airplane rating.[76]

The ARAC ACS WG stated that the Note on AOO II, Technical Subject Areas, Task A, Human Factors, should require the evaluator to assess half the sub-elements and that testing on all sub-elements is excessive. Appendix 1 of each ACS indicates that, if a knowledge element includes sub-elements, the evaluator may choose the primary element and select at least one sub-element to satisfy the requirement, unless otherwise noted in a specific Task. Because the Human Factors Task did not note that additional sub-elements are required, only the primary element and at least one sub-element should be selected by the evaluator. Therefore, the task remains unchanged.

One commenter submitted many comments on the format and layout of the flight instructor ACS. The commenter suggested that all tasks in the Flight Instructor Airplane ACS equivalent to those in the Private and Commercial Pilot Airplane ACS should have identical elements. In other words, the commenter stated the only difference should be the requirement for instructional knowledge in the objective to streamline the organization of the ACS. Additionally, the commenter suggested that the FAA first remove all risk management elements in AOO I, Fundamentals of Instructing, and second include a single skill element requiring the evaluator to evaluate all knowledge elements. The ACS uses a

[73] The risk management element in Task F requires the applicant to identify, assess, and mitigate risk associated with hazards associated with providing instruction, obstacles to maintaining situational awareness during flight instruction, and recognizing and managing hazards arising from human behavior, including hazardous attitudes.

[74] AMEL stands for Airplane Multiengine Land; AMES stands for Airplane Multiengine Sea; ASEL stands for Airplane Single-Engine Land; ASES stands for Airplane Single-Engine Sea.

[75] These sub-elements include demonstrating the skill with landing gear extended, wing flaps extended, landing gear and wing flaps extended, and windmilling propeller on the inoperative engine.

[76] The asterisk designation is important in the added ratings tables for ACS documents that do not require all tasks to be completed. Each AOO and/or task has a note identifying the requirements. The asterisk directs the evaluator to review the note and test accordingly. If ''ALL'' was listed on the added ratings table, then all tasks within the AOOs would be required. As a result, the practical test for an added rating would be more restrictive and burdensome than the initial practical test for that certificate or rating.

common FOI intended to confirm an applicant's ability to provide instruction in general terms that applies to all instruction, similar to the equivalence between the Fundamentals of Instructing Tasks in the respective Instructor PTS. The purpose of the Flight Instructor ACS is to determine if an applicant is able to teach the material in a manner conducive to an applicant's learning and, therefore, requires basic and similar knowledge, risk management, and skill element validation.

Finally, one commenter posed questions regarding the use and evaluation of certain elements in the Flight Instructor Airplane ACS. The commenter's questions generally concerned how the FAA evaluates risk and skill elements that are part of the FOI and what AOOs and Tasks evaluators test on the ground versus in flight (and whether tangential tasks could be combined). The FAA notes that the commenter's questions reference how an evaluator designs a practical test, creates a plan of action, and administers the test. First, in general, while knowledge of FOI theory applies during the ground portion of the practical test, risk and skill elements associated with the FOI may also apply during the flight portion of a practical test for an instructor rating. Next, while evaluators focus on AOOs I through V during the ground portion of the practical test (*i.e.,* the FOI, technical subject areas, a preflight lesson on a maneuver to be performed in flight, preflight planning, and elements of preflight preparation), evaluators may ask questions or observe applicant behaviors that relate to these same subjects during the flight portion of the practical test. Evaluations conducted during the flight portion of the practical test consider whether an applicant meets instructional criteria, provides appropriate technical information, and performs risk management. Prospective applicants should read the ACS Companion Guide for Pilots, ACS Introductory paragraphs, the ACS appendices, and may view FAA online resources to better understand design and administration of practical tests.

The ARAC ACS WG provided an extensive list of suggested administrative changes to the Flight Instructor Airplane ACS that do not change the objectives of the tasks and AOOs. For example, the ARAC ACS WG suggested adding a risk element addressing wrong surface operations to the Runway Incursion Avoidance Task (AOO II, Task C). The focus of this Task is to prevent runway incursions, which should already encompass wrong surface operations that can lead to a runway incursion. As another example, the ARAC ACS WG recommended adding a risk element pertaining to NOTAMs within risk management of the NAS (AOO II, Task G). However, the FAA notes that this topic is already covered in AOO II, Task I. The FAA intends to continue working with the ARAC ACS WG in the future to continually improve the ACS and will consider administrative suggestions for later revisions of those elements.

Additionally, several of these editorial comments by the ARAC ACS WG suggested the FAA reorganize, rename, and resituate tasks within the Flight Instructor Airplane ACS, which would require a substantial overhaul, consolidation, and reorganization of AOOs, tasks, and elements. The FAA understands the desire for uniformity amongst the series of ACS for convenience but notes the ACS consist of independent documents and standards, applicable to different categories and classes of aircraft over multiple certificate levels. Because the requested editorial and organizational changes would not have any impact on safety in the NAS, the FAA only made the changes specified in Table 3, Record of Editorial/Minor Changes, at this time.

vi. FAA–S–8081–9E, Flight Instructor—Instrument PTS for Airplane Rating and Helicopter Rating, November 2023

The Flight Instructor Instrument PTS for Airplane Rating and Helicopter Rating provides a table for the addition of an instrument instructor rating to an existing flight instructor certificate. Specifically, the table lists each possible flight instructor certificate and rating held and then provides the required AOOs and Tasks included on the practical test for an additional rating. The ARAC ACS WG commented that the header ''IA,'' meaning Instructor Instrument—Airplane Rating, was nonsensical because the applicant would already hold that certificate. However, this PTS sets forth the requirements for both a flight instructor instrument—helicopter rating and a flight instructor instrument—airplane rating. Therefore, the table in this PTS serves applicants who may hold an instructor instrument airplane rating, who would follow the ''IA'' header to know what AOOs must be completed for an instrument instructor-helicopter rating; accordingly, the PTS retains the ''IA'' header.

vii. FAA–S–8081–8C, Flight Instructor Glider PTS for Glider Category, November 2023

The Soaring Safety Foundation (SSF) recommended adding a Runway Incursion Avoidance task to the Flight Instructor Glider PTS and stated that the proliferation of motor gliders, both touring and all other types, increases the likelihood of a runway incursion. However, the FAA notes that the introduction to the PTS states that evaluators and instructors must place special emphasis on areas of aircraft operation considered critical to flight safety, which expressly includes a reference to runway incursion avoidance. Because this risk is accounted for in the special emphasis areas, the FAA finds the special emphasis area sufficient. During the transition to ACS, the FAA may relocate this special emphasis area to a risk element, if warranted.

Additionally, the SSF recommended adding a night operations task to the flight instructor PTS only, citing the same reasons as the recommended addition of the Runway Incursion Avoidance task. While the FAA agrees that motor gliders could operate at night if properly equipped, given the small community of night-flying glider pilots and the absence of a task in the Private and Commercial Glider ACS, there is not an urgent safety-sensitive reason to expand the footprint of the flight instructor test without notice and comment at this time. It would also be difficult to require a flight instructor to demonstrate instructional ability for this task when there is no requirement within the pilot PTS for gliders. However, the addition of this task may be considered across all glider certificate levels when transitioning the Glider PTS to ACS in the future if there is a safety-based case to do so.

Finally, the SSF also requested the addition of a high-altitude operations task in the Flight Instructor Glider PTS. Specifically, SSF stated the increased number of high-altitude glider cross-country flights that largely occur between 12,500 feet and 18,000 feet when flying in the mountains warrant a specific task to ensure competency. However, relevant testing on this subject area is already housed under AOO X, Soaring Techniques, Task C, Wave Soaring, which predominately occurs at high altitudes.

viii. FAA–S–ACS–8C, Instrument Rating—Airplane ACS, November 2023

One commenter suggested that the FAA modify the Instrument Rating—Airplane ACS to include the option for

evaluation of filing an IFR flight plan to ensure realistic ATC handling. Currently, the skill element found in AOO I, Preflight Preparation, Task C, Cross-Country Flight Planning, differs from the suggestion in that it would provide the option of creating a navigation plan and actual filing of an IFR flight plan. The FAA did not implement this option in any of the Instrument Rating ACS since the intent of the task is to test the applicant orally and not demonstrate the cross-country in flight and the applicant is tested on ATC handling AOO III, Task A. Additionally, the training required for an instrument rating set forth by § 61.65 requires instrument flight training on cross-country flight procedures performed under IFR when a flight plan has been filed with an ATC facility.[77] The applicant already demonstrated their ability to fly a cross-country in the certificate level they hold. This rating is for the purposes of instrument flight only. The FAA considers that simulated filing of an IFR flight plan on a practical test provides sufficient assurance an applicant can file an IFR flight plan and receive a clearance. As such, the FAA did not make the change in the final ACS.

Another commenter stated that the phrasing used in AOO I, Preflight Preparation, Task A, Pilot Qualifications changed between the original Instrument Rating—Airplane ACS (FAA–S–ACS–8), published in 2016, which used the element ''when an instrument rating is required'' and the Instrument Rating—Airplane draft published in 2019 and maintained in the NPRM draft (FAA–S–ACS–8B and FAA–S–ACS–8C, respectively), which use the phrase ''privileges and limitations.'' The commenter stated that because privileges and limitations only exist for pilot certificates, not ratings, the knowledge element should be changed back to the 2016 phrasing. The FAA did not make a change to the adopted ACS. The terminology ''privileges and limitations'' aligns with part 61. Specifically, § 61.2(a) defines the validity of privileges of a certificate and a rating. When a rating appears on a pilot certificate, the rating itself conveys certain privileges and limitations. For example, a person who has a commercial pilot certificate with an airplane category rating is limited from exercising commercial pilot privileges in a rotorcraft category, helicopter class until they obtain a rotorcraft category, helicopter class rating. The same concept applies to those privileges accompanying an instrument rating (*i.e.,* flight under IFR).

One commenter stated that AOO II, Task A, Aircraft Systems Related to Instrument Flight Rules (IFR) Operations, traditionally focused only on deicing systems and noted that the FAA added knowledge, risk management, and skill elements pertaining to autopilots. The commenter suggested eliminating duplication of elements related to automation between that Task and AOO II, Task B, Aircraft Flight Instruments and Navigation Equipment task. The FAA notes that Task A is specific to aircraft systems related to IFR operations. This area not only includes de-icing systems, but also automatic flight control systems (AFCS) as set forth in the draft ACS. The FAA intentionally added the elements for automation systems given technological advancement and modern aircraft equipage. The purpose of Task B is to test the applicant on the flight instruments and navigation pertaining to IFR operations. The flight instruments correlate to automation; however, the two tasks have two different objectives. Based on these reasons, the FAA is retaining these elements in the final ACS.

The ARAC ACS WG recommended that the FAA remove the requirement for a circle-to-land in the IPC so pilots may complete the IPC solely using an Advanced Aviation Training Device (AATD). The FAA disagrees with this recommendation, as AATD's lack the fidelity requirements for both the visual and motion (no motion system requirement) systems to properly represent the conduct of a circling and landing approach. Pilots need to demonstrate their ability in a realistic environment so that they are prepared to conduct the maneuver in the NAS.[78] It is for this reason that credit is also not provided for landing tasks. To receive accurate training on these tasks, the pilot will have to use an airplane or a full flight simulator (Level B, C, or D).

ix. FAA–S–ACS–6C, Private Pilot for Airplane Category ACS, November 2023

One commenter suggested the FAA remove knowledge of certification requirements from the Private Pilot Airplane ACS, element PA.I.A.K1. Specifically, AOO I, Preflight Preparation, Task A, Pilot Qualifications, requires an applicant to demonstrate understanding of certification requirements, recent flight experience, and record keeping. The suggested change would remove ''certification requirements'' from the element, as the commenter stated that knowledge of the certification requirements is irrelevant for an applicant at the practical test stage and would be more relevant to flight instructors. The FAA disagrees with this removal, as a private pilot applicant should know specific FAA regulations under title 14 Code of Federal Regulations that not only pertain to initial private pilot certification but also pertain to maintaining certification to continue operating privileges (*e.g.,* removal of any certification limitations, adding ratings). While flight instructors provide the required dual ground and flight training and verify the applicant meets the minimum requirements for that pilot certificate, this fact alone does not relieve an applicant from knowing the regulatory requirements for their own continuing certification.

The same commenter suggested the FAA change a skill element found in AOO I, Preflight Preparation, Task D, Cross-Country Flight Planning, to create an aviation plan and file, or simulate filing, a VFR flight plan as directed by the evaluator (specifically, element PA.I.D.S3). The commenter further detailed that some applicants have never filed a VFR flight plan airborne or on the ground. This change would give the evaluator the option to ask an applicant to demonstrate opening and closing a flight plan during the flight portion of a practical test as opposed to only simulating this requirement. The FAA notes that two elements within AOO I (PA.I.D.K4, elements of a VFR flight plan and PA.I.D.K5, procedures for filing, activating, and closing a VFR flight plan), allow an evaluator to determine the understanding and ability of an applicant to create, file, open, and close a VFR flight plan. The FAA did not modify the ACS as suggested, as this task corresponds with the oral portion of the practical test that occurs prior to flight, and the applicant would demonstrate this task as a simulation.

One commenter suggested that the Tasks in the AOO for Basic Instrument Maneuvers (AOO VII) should be moved to Emergency Procedures because the focus of basic instrument maneuvers should be to enable a non-instrument rated pilot to successfully avoid and, failing that, recover from inadvertent IMC. The commenter stated that the location of the tasks will more appropriately emphasize the purpose of the training. The FAA agrees with the commenter that emergency procedures may situationally necessitate basic instrument maneuvers and, therefore, would involve both AOOs. However, the FAA did not make the resulting change in the adopted Private Pilot

[77] 14 CFR 61.65(d)(2)(ii).

[78] See Advisory Circular 61–136B, appendix E.

Airplane ACS because tasks pertaining to basic instrument maneuvers appropriately prioritize within their own AOO. Additionally, this AOO corresponds to the regulatory AOO for Basic Instrument Maneuvers as set forth by § 61.107(b)(1)(ix) and (b)(2)(ix). When creating a plan of action, the evaluator can combine tasks into one scenario to address the commenter's suggestion.

The ARAC ACS WG suggested the addition of a note to clarify whether applicants can use avionics-generated information to provide a destination estimate for the initial or revised estimate during the Pilotage and Dead Reckoning Task within AOO IV, Navigation. The ACS and PTS create requirements for certification, and the FAA handbooks and guidance provide accepted methods of compliance. In accordance with a reference listed for this Task, the Pilot's Handbook of Aeronautical Knowledge [79] defines pilotage as navigation by reference to landmarks or checkpoints. The guidance explains that, due to safety concerns in the event of electronic navigation failure, applicants should have the ability to use pilotage and dead reckoning for navigation. While the FAA accepts using a computer-generated initial estimate as part of flight planning, this Task provides the applicant an opportunity to demonstrate basic understanding of the speed, time, and distance relationship using realistic estimates without the benefit of satellite or ground-based electronic navigation equipment. The FAA did not add a note to the pilotage and dead reckoning task for avionics-generated information to provide a destination estimate since the FAA's handbook definition of pilotage and dead reckoning does not involve the use of GPS or electronic navigation.

The ARAC ACS WG suggested adding Tasks from AOO IX, Emergency Operations, Tasks E, F, and G (involving engine failures/inoperative engines specific to multiengine airplanes) to the requirements for an added multiengine sea rating based on the applicant already holding a multiengine land rating. In the absence of safety data requiring additional emergency operation testing for an airplane multiengine sea added rating, the FAA maintains that these Tasks have sufficient commonality in required maneuvering between AMEL and AMES and, therefore, did not require the emergency operation testing for an added multiengine sea rating.

The ARAC ACS WG suggested changing a skill element for the Emergency Descent Task (AOO IX, Task A) to reference the Airplane Flying Handbook (FAA–H–8083–3) and the airplane flight manual (POH/AFM). However, the Task lists the Airplane Flying Handbook as a general reference and the POH/AFM as a specific reference within the element itself. These references provide applicants with the opportunity to develop familiarity with that handbook information regarding an emergency descent. During a demonstration of an emergency descent, the FAA expects applicants to follow the manufacturer's guidance (*i.e.,* the POH/AFM) as the most tailored information to that aircraft.

x. FAA–S–8081–32A, Private Pilot PTS for Powered Parachute Category and Weight-Shift-Control Aircraft Category, November 2023

Members of the ARAC ACS WG noted that the Private Pilot PTS for Powered-Parachute and Weight-Shift Control lacks elements related to risk management. The FAA notes that the PTS uses special emphasis areas that apply globally to PTS Tasks to address risk mitigation. In addition, the section on unsatisfactory performance discusses failure to use proper and effective visual scanning techniques to clear the area before and while performing maneuvers. While the FAA made minor changes to PTS documents published as part of the NPRM, the FAA considered it appropriate to develop risk management elements within each Task when converting the PTS to an ACS through the collaborative process established within the ARAC ACS working group, especially where no safety concerns were identified by the commenters to justify an addition as part of this rule.

xi. FAA–S–8081–17A, Private Pilot PTS for Lighter-Than-Air Category, November 2023

One commenter recommended inclusion of an additional ratings task table for applicants seeking a balloon rating. The FAA notes the PTS that accompanied the NPRM had not been converted into ACS and were largely unchanged from their pre-NPRM version. As a result, the FAA did not create the additional ratings task table during this rulemaking. The FAA intends to consult with members of the ARAC ACS WG prior to proposing an additional rating task table for future revisions.

xii. FAA–S–8081–10E, Aircraft Dispatcher PTS, November 2023

The ARAC ACS WG provided extensive comments regarding the Aircraft Dispatcher PTS and aircraft dispatcher certification in general. The FAA found many of these comments and suggestions, such as raising minimum enrollment requirements, increasing training hours, and reducing items unique to pilots, outside the scope of this rulemaking. However, in this section, the FAA responds to the comments pertaining to the Aircraft Dispatcher standards, currently in the form of a PTS and planned for conversion to an ACS in the future. See section IV.D., Table 3 Editorial/Minor changes of this preamble for editorial/minor changes made to the Aircraft Dispatcher PTS.

One comment suggested removing certain elements from the Aircraft Systems, Performance, and Limitations Task in the Flight Planning/Dispatch Release AOO. Specifically, the commenter recommended removal of elements corresponding to weight and balance because the commenter contended that these issues have been removed from the knowledge test. The FAA notes that the dispatcher knowledge test does have weight and balance questions, and the FAA will continue to support questions for those enumerated elements within the PTS (eventually ACS). Additionally, an applicant must demonstrate skill in the areas of knowledge specified in appendix A of part 65, which includes weight and balance. As a result, the FAA maintains the elements that require the applicant to compute weight and balance and determine limits, which directly impacts aircraft performance for all phases of flight.

The commenter further suggested removing elements related to marker beacons, Automatic Direction Finder (ADF), and Doppler Radar in AOO I, Flight Planning/Dispatch Release, Task F, Navigation and Aircraft Navigation Systems. The FAA did remove doppler radar and marker beacons from the NPRM version of this PTS. However, the FAA does not agree with removal of automatic direction finder (ADF). Because low altitude airways in the NAS rely on non-directional beacons, aircraft dispatchers may reference these routes, and some aircraft may track these routes using an ADF or Radio Magnetic Indicator (RMI). The FAA's current U.S. Terminal Procedures Publication (TPP) contains Non-Directional Beacon (NDB) approaches, which require an appropriate display.

3. Universally Applicable Comments

i. ARAC ACS WG Comments

The ARAC ACS WG submitted extensive comments to the NPRM and

[79] FAA–H–8082–25.

various ACS and PTS. Discussion of a number of these comments occurred within sections IV.A. and IV.B. of this preamble. Additionally, the FAA adopted many of the ARAC ACS WG's suggestions in the ACS and PTS accompanying this final rule, detailed in Table 3 of Section IV.D. of this preamble. The FAA offers the following responses to the ARAC ACS WG comments.

The ARAC ACS WG suggested several formatting revisions, such as a change from tables to lists, numbering of the ACS appendix tables, and clarifying section headers. The FAA maintained the format of the ACS as proposed in the NPRM and notes that clear titles appear above each chart, followed by a brief description of the chart's purpose for each ACS, as well as within the body of the ACS themselves. In its continuing collaboration with the ARAC ACS WG, the FAA will consider recommendations and implement any changes that the FAA determines will improve the readability and understanding of the ACS documents.

The ARAC ACS WG questioned whether a determination that an applicant or certificate holder has met certain English language requirements applies only to the practical test or to an IPC as well. The ARAC ACS WG referred, specifically, to certain content in the ACS that requires an evaluator to determine whether an applicant meets the FAA Aviation English Language Standard (AELS). The ARAC ACS WG seems to contend that the text should clarify English requirements, as the ACS states it only applies to evaluators administering a practical test, which does not include an IPC. The FAA examined this language and determined that the paragraph in question does apply to a practical test, evidenced by terminology and phrasing such as ''applicant,'' ''before starting the practical test,'' and ''discontinue the practical test.'' However, the FAA neglected to include checking, as explained in AC 60–28B, in the ACS AELS section of appendix 1 and pointed out by the ARAC ACS WG. As a result of the review, the FAA updated appendix 1 of each ACS to include a practical test and regulatory checks (*e.g.,* IPC or pilot-in-command proficiency check). The evaluator conducting testing, training, or any required regulatory check should evaluate if the applicant for an FAA certificate or holder of an FAA certificate demonstrates the FAA AELS.

Next, the ARAC ACS WG suggested that sample airman knowledge test questions need to have representative questions reflecting the ACS coding on actual tests to accurately reflect what an applicant missed on the practice exam. The ARAC ACS WG stated that this, in turn, will aid applicants, instructors, and evaluators in discrete identification and training on specific missed elements. The FAA currently provides codes for the sample knowledge test questions related to an ACS. As PTS convert to ACS, the FAA works to ensure it updates the sample test bank and will continue to do so as an outgrowth of this rulemaking. Additionally, many independent sources, as well as the FAA's contracted vendor for knowledge testing, PSI Services, LLC, have practice tests available where users can receive sample test reports and ACS codes. However, because these practice tests are not authored or administered by the FAA, the FAA cannot commit to future efforts to tie test reports to the ACS codes in those instances.

Lastly, the ARAC ACS WG suggested revisions to part 141 to align with the revisions to part 61. Specifically, the ARAC ACS WG stated that the NPRM is inaccurate in its statement that the AOOs for testing, whether under part 61 or part 141, will be governed by areas of operation in the applicable ACS or PTS. The ARAC ACS WG sought clarity in both § 141.67(c) and appendix E.4.(c) to part 141 to align the AOOs with part 61 and the ATP ACS.[80]

As discussed in the NPRM, the FAA contemplated the proposal of conforming amendments to part 141 to reconcile the proposed changes in part 61. However, the FAA did not propose any revisions to part 141. In other words, applicants from a pilot school (or provisional pilot school) either take the practical test or an end-of-course test given by a pilot school that holds examining authority. The practical test under part 61 would align with the applicable ACS by direct reference in part 61: §§ 61.14 and 61.43, as adopted. The end-of-course test would align with the applicable ACS through the cross-reference in § 141.63(c), without need for further amendment because § 141.67(c) already requires such end-of-course test to be equal in scope, depth, and difficulty to the comparable practical test prescribed by the Administrator under part 61 (*i.e.,* the practical test that aligns with the applicable ACS by regulation).

As stated in the NPRM, the FAA acknowledges that the areas of operation in part 141, appendix E, section 4.(c) will not precisely align with the areas of operation set forth in § 61.157(e) as adopted in this final rule. The FAA considered making conforming amendments to part 141 appendices in this rulemaking; however, the concern for unintentional administrative repercussions to part 141 pilot schools and approved training curriculums that would be outside the scope of this rulemaking outweighed the aspiration for consistency at this time.

ii. Other General Comments

Outside of the ARAC ACS WG comments, many commenters' statements were general in nature. This section addresses general comments regarding ACS and PTS across a broad range of aircraft.

One commenter questioned how incorporating the ACS and PTS by reference would affect the referenced material with each task (*e.g.,* other regulations, ACs, Handbooks, Flight Manuals, etc.). The FAA notes that secondary references included in a document incorporated by reference are not considered regulatory unless another mechanism has made them so.[81] For example, a secondary reference to an Advisory Circular is not regulatory because an Advisory Circular is guidance by nature. Conversely, a secondary reference to a specific 14 CFR section would be regulatory because it is adopted into the CFR. Therefore, incorporation by reference does not reach to the reference material listed under each Task heading in all ACS and PTS unless another mechanism makes the references regulatory. In the event of a conflict between secondary references and the ACS and PTS, the ACS and PTS would control, as the secondary references, unless made regulatory through other means, only constitute guidance.[82] Because these references and other guidance in existence do not

[80] 14 CFR 141.67(c) requires tests given by a part 141 school that holds examining authority to be at least equal in scope, depth, and difficulty to the tests prescribed under part 61. Appendix E to part 141 prescribes the minimum curriculum for an airline transport pilot certification course for the following ratings: airplane single engine, airplane multiengine, rotorcraft helicopter, and powered-lift. Section 4.(c) in the appendix requires an approved course to include flight training on the AOOs listed in that section.

[81] The Office of the Federal Register contemplated the inclusion of secondary references in material that has been incorporated by reference and declined to extend its regulatory purview to allow for IBR of secondary material merely referenced in the primary document. See *Incorporation by Reference,* 76 FR 66267, 66275 (Nov. 7, 2014).

[82] The commenter specifically noted that Lighter-Than-Air Balloon Manual PTS, which lists the balloon flight manual as reference and notes that no regulation exists requiring a balloon to have a flight manual. The FAA lists a flight manual in the Lighter-Than-Air Balloon as a reference only to contemplate a balloon that does have a flight manual as a resource for applicants and DPEs for that specific task. If a flight manual does not exist, then that reference would simply not apply.

require an applicant seeking a certificate or rating to complete specific tasks and maneuvers to a minimum given standard to obtain the applicable certificate or rating as the ACS and PTS do, the FAA did not incorporate those documents by reference in this rulemaking.

Additionally, the commenter stated that rather than using incorporation by reference for the PTS and ACS, the FAA should move to a testing standard model like that of the Financial Accounting Standards Board, where an independent entity of experts provides generally accepted accounting standards. The commenter conceded that these standards are authoritative and without IBR as law with the Securities and Exchange Commission (SEC). The FAA does not purport to be an expert in regulation by other Federal agencies but notes that it considers these standards to satisfy the criteria in section 108 of the Sarbanes-Oxley Act of 2002 as generally accepted for purposes of federal securities laws. The FAA does not find that this model translates to airman certification as the commenter suggests. The FAA drafted and revised ACS and PTS in collaboration with industry affiliates. Rulemaking further enhances and facilitates a broad range of input and provides an equal opportunity for any interested party to provide comments for consideration. However, the FAA possesses the statutory authority under 49 U.S.C. 44702 to issue airman certificates when the Administrator finds an individual qualified for and able to perform the duties related to the position authorized by the certificate. The FAA does not find it appropriate to allow outside parties to maintain a performance-based approach to certification standards whereby an outside entity may create an independent framework to certification. Further, consideration of an overhaul to the certification system of this nature falls outside the scope of this rulemaking.

One commenter provided extensive feedback on the broad concept of risk management elements within the ACS. Specifically, the commenter stated that risk management elements should only be tailored to those subject areas that have historically been common causes of accidents, incidents, and/or violations to ensure an objective practical test. The commenter stated that the addition of risk management elements, as well as the open-ended phrasing and lack of guidance material, creates a subjective, overwhelming, and unreasonable testing standard that does not enhance aviation safety and, rather, makes learning and evaluation more difficult. The commenter provided several examples to support the position that the risk management elements may seem to pose a significant risk but, in actuality, do not pose such a risk; the commenter offered the element of ''unexpected runway changes by ATC'' to support this contention. Specifically, the commenter stated that this element is required in the Private Pilot ACS, but that is not a threat until a pilot is operating an aircraft at an ATP certificate level.

The FAA recognizes that each of the ACS contains many risk management elements. However, the FAA does not agree that regulatory testing should only include risk management elements that have objectively resulted in accidents, incidents, and/or violations. A risk, by definition, includes the composite of the predicted severity and likelihood of the potential effect of a hazard; therefore, an action cannot require a fixed standard or minimum of a certain level of accidents or fatalities as the only benchmark to be considered as ''risky.'' If the FAA only included those risk factors identified through accident or incident data, it could unintentionally remove a risk management element that succeeds in keeping the accident and incident rate low in that particular area, thereby creating greater risk (*i.e.,* training and testing on a certain risk management element could explain a lack of accidents/incidents attributed to that risk management element). Conversely, many accident/incident reports may attribute a cause to one area when multiple causes affect an outcome. As the regulator of the NAS, the FAA seeks to ensure pilots train and test to the highest standard of safety and finds that the risk management elements equip pilots with the knowledge and strategies to (1) reduce hazardous situations in the NAS and (2) mitigate situations when they do arise.

While some risk management elements may seem duplicative or redundant, the vast array of unique piloting scenarios and challenges may require a pilot to consider the same hazards at multiple instances. The FAA agrees that the number of risk management elements in the ACS exceeds the number of Special Emphasis items in the PTS; however, the FAA intended this development. The PTS has long required the evaluation of knowledge and risk management elements in both the ground and flight portions of the practical test. The ACS acts as a better tool because it clearly defines these elements and organizes them in the context of phases of flight rather than broadly scoped risk identification. As the commenter pointed out, the risk management element of ''collision hazard'' is often parroted throughout the ACS. However, with mastery of the knowledge and skill of, for example, recovery from unusual flight attitudes, emergency descent, or night operations, the ACS ascertains that a pilot should be proficient at identifying any resulting collision hazards.

Additionally, the FAA authored the Risk Management Handbook [83] as guidance to help recognize and manage risk. Specifically, applicants and instructors may use the handbook as a tool to identify potential flight hazards, assess the hazard, and mitigate associated risks. ACS tasks reference this Risk Management Handbook, and it provides context, expansion, and case studies on several risk management elements. For example, many of the ACS include risk management elements specific to fuel planning (*e.g.,* Private Pilot for Airplane Category ACS AOO I: Preflight Preparation, Task D: Cross-Country Planning, risk management element 6: the applicant can identify, assess, and mitigate risk associated with fuel planning). The Risk Management Handbook sets forth a hypothetical scenario in which a reduced fuel load due to additional weight requires a risk assessment of fuel stop planning, alternate landing destinations, fuel efficiency due to weather and/or altitude, etc. While the FAA agrees with the commenter that the handbook does not have a specific scenario for every risk management element, the handbook provides a foundation of analytical tools a pilot could apply to the complexities of risk mitigation. During a practical test, the element of subjectivity may decrease insofar as the applicant may also test on their awareness, mitigation, and consideration of elements in the context of a separate task or maneuver in the operating environment.

Finally, the FAA notes that, in collaboration with the ARAC ACS WG, it revised the risk management elements from identification of negative action (*e.g.,* failure to do something) to simply identification of the area within which an applicant could analyze risk. The actual risk involves hazards associated with the action, rather than failure to do something specific, as a pilot's failure to do something may not be the only time risk presents itself in a scenario (*e.g.,* collision hazards, a system malfunction). The FAA expects applicants to demonstrate knowledge of hazards and risks associated with a Task

[83] *https://www.faa.gov/regulationspolicies/handbooksmanuals/risk-management-handbook-faa-h-8083-2a.*

and to demonstrate the aeronautical decision-making ability to mitigate risks that develop during the practical test, including those risks inside and outside of a pilot's control (or failure to maintain control).

GAMA, members of the ARAC ACS WG, and several individual commenters urged the FAA to continue working with the ARAC ACS WG to continue fostering a collaborative environment with the airmen training and testing regime. GAMA specifically encouraged the FAA to task the ARAC ACS WG with the continuation of its work to support the agency's experts in managing and modernizing the airman certification framework. Additionally, these groups expressed concern regarding communication between the ARAC ACS WG and the FAA due to ex parte limitations during a rulemaking. Further, GAMA would like the FAA to provide a clear schedule for development to assist the industry.

First, the FAA notes it does not intend to disengage from the ARAC ACS WG and plans to continue working together on further ACS publications and safety-related matters. Specifically, the FAA expects the ARAC ACS WG and the FAA to collaborate in the conversion of the remaining PTS to ACS, refinement of the active ACS, and incorporation of future developments in aviation innovation within the airmen certification framework. The ARAC ACS WG development process does not need to change simply because the FAA must make ACS documents regulatory through the IBR process once they are submitted to the FAA by ARAC.

Because the ACS and PTS attain regulatory status upon the effective date of this final rule, any revisions made to the documents will require rulemaking. While this benefits the regulated community in that it will clearly inform and define the revisions in a given ACS or PTS that the regulated community must adhere to, it also means that the FAA and the regulated community, including the ARAC ACS WG, must heed ex parte considerations [84] upon the commencement of the rulemaking. The FAA notes that this does not mean all communications would halt with the ARAC ACS WG and/or other interested industry parties. Rather, the FAA simply cannot discuss or negotiate the substance of that particular rule with an outside party without providing the same opportunities to all members of the regulated community. For example, if the ARAC ACS WG submitted a recommendation with the Commercial Pilot Airplane ACS through ARAC and the FAA concurred and commenced a rulemaking, the FAA would follow the Department of Transportation (DOT) requirements and guidance on ex parte contacts during informal rulemaking.[85] However, this limitation would not necessarily keep the FAA from continuing to collaborate with the ARAC ACS WG on matters unrelated to the rulemaking, for example, the Private Helicopter ACS. Additionally, the FAA could meet with interested parties to receive information and may ask clarifying questions, as long as such meetings are appropriately memorialized and promptly docketed. Finally, the FAA cannot commit at this time to a clear schedule of the PTS to ACS transition or provide a concrete revision cycle but will collaborate on timelines with the ARAC ACS WG based on revision priority and resources.

Finally, one commenter suggested some general changes to the weather task elements throughout all of the ACS. The commenter first recommended removing the weather depiction chart as obsolete, which the FAA agrees with and has made the change in the appropriate ACS (see section IV.D., Table 3, of this preamble for weather-related element changes, including other weather charts as referred to by the commenter). Additionally, the commenter generally disagreed with itemizing the weather-related products throughout the ACS and suggested that, if itemization was necessary, the FAA reorganize the element as observation, analyses, forecasts, and in-flight weather advisories. While the FAA has maintained the general itemization of those weather elements to provide specific feedback for applicants on knowledge tests and to allow applicants, instructors, and evaluators to focus on specific incorrect knowledge elements related to weather products and resources, the FAA updated ACS to maintain currency with aviation products.

C. ACS Testing Codes

As previously discussed, the FAA is in the process of converting the PTS to ACS. Since this endeavor began in 2011, a number of PTS have, in fact, been converted into ACS and are utilized today as the testing standard. However, as part of this rulemaking, the FAA proposed revisions to existing ACS in addition to incorporation by reference. As a result, some ACS element codes were revised. The ACS codes for these elements serve as the link between the airman knowledge test and the practical test. Specifically, the FAA assigns an ACS code to every knowledge test question. When a person answers a question incorrectly on an airman knowledge test, the ACS code associated with that test question appears on the applicant's knowledge test report so that an evaluator may include the ACS element on the practical test. Additionally, pursuant to § 61.39(a)(6), an applicant must obtain an endorsement from an authorized instructor certifying that the applicant demonstrated satisfactory knowledge of the subject areas shown as deficient on the airman knowledge test. Therefore, the accuracy of these codes ensures that an applicant has the required knowledge before receiving a certificate.

Because the ACS elements link to an ACS code, as existing ACS are modified, ACS codes may undergo revision. Specifically, ACS codes will be added when ACS elements are added to tasks under areas of operation. Further, the addition of ACS elements could create a shift in ACS codes for subsequent ACS elements. Conversely, ACS element codes may archive when the FAA removes ACS elements from tasks under areas of operation. Given that airman knowledge report and associated test codes remain valid for 24 months or 60 months,[86] shifting ACS element codes could create problems in the accurate identification of ACS elements trained and endorsed under § 61.39(a)(6) and tested by the evaluator.[87] The ARAC ACS WG commented on this potential problem with revised ACS, stating that the FAA needs a way to convey what subjects correspond to the ACS element code on the Airman Knowledge Test Report to ensure the correct retraining takes place should ACS code shuffling occur.

The FAA notes that it proposed four revised ACS with the NPRM that contained reordered elements: Private Pilot for Airplane Category ACS, Commercial Pilot for Airplane Category

[84] See 49 CFR 5.5. See also Guidance on Communication with Parties outside of the Federal Executive Branch (Ex Parte Communications), April 19, 2022; *https://www.transportation.gov/regulations/memorandum-secretarial-officers-and-heads-operating-administrations.*

[85] The FAA notes that, in accordance with the APA, the regulated community would have an opportunity to comment within that rulemaking docket, similar to this IBR process.

[86] See § 61.39(a) prerequisites for practical tests.

[87] The FAA notes that some commenters suggested reorganization of tasks and elements for alignment purposes across certain ACS. For example, Flight Safety International commented that tasks in the Preflight Preparation Area of Operation should be reorganized to align the ATP and Type Rating Airplane, Helicopter, and Powered-Lift ACS and PTS. The FAA declined to revise tasks solely for the purpose of alignment where this would result in major changes to the testing codes.

ACS, Instrument Rating—Airplane ACS, and ATP and Type Rating for Airplane Category ACS. As noted by the ARAC ACS WG, these revisions resulted in code shuffling,[88] which the FAA corrected in the versions of these ACS incorporated by reference. Additionally, the ARAC ACS WG suggested additional detail within certain elements of ACS. Breaking out elements could create a disruption in the middle of codes in the proposed ACS revisions, thereby creating a waterfall effect of ACS coding changes. Therefore, the final ACS revisions now list several new sub-elements under the overarching element, a framework that will not substantially affect ACS codes and that the FAA could apply for future ACS revisions. For example, the Instrument Rating—Airplane ACS dated June 2018, FAA–S–ACS–8B, sets forth the knowledge element of ''Route planning, including consideration of the available navigational facilities, special use airspace, preferred routes, and alternate airports.'' The FAA recognizes that many substantive concepts reside within this overarching element, such that a discrete deficiency should receive a narrower scope (*i.e.,* an applicant could be deficient in demonstrating knowledge of route planning because the applicant missed a question in chart supplements but subsequently receive an endorsement from an instructor by demonstrating knowledge of special use airspace, thereby failing to cure the deficiency). Therefore, the FAA further detailed the element into sub-elements.[89] These sub-elements will also provide applicants, evaluators, and authorized instructors with more discrete identification of subject deficiency.

In the future, if the FAA adds discrete elements to ACS tasks, the FAA has identified a framework of including additions at the end of the listing so as to not create a waterfall effect of code shifting. Additionally, where the FAA removed an element, the FAA simply replaced the text with the term ''Archived.'' A record of archived ACS testing codes appears in Section 8 of the ACS Companion Guide for Pilots, as well as a record of changes in the front matter of the particular ACS. The FAA plans to update and utilize Section 8 of the Companion Guide to communicate archived codes in future revisions of ACS that may occur.

Finally, an applicant must test in accordance with the regulations that exist at the time of the practical test, meaning that the evaluator must base the practical test on the version of the ACS incorporated by reference at the time of that test. Evaluators will test applicants on the elements that the applicant was shown to be deficient on the knowledge test; however, if the codes correspond to any archived elements that no longer apply to the ACS with which the practical test must align, evaluators would not include those elements on the practical test.[90] Therefore, the FAA modified appendix 1 of the ACS series with an applicability statement in the minimum elements tested for each applicable task.

D. Record of Changes

The FAA received a number of editorial or minor changes to specific ACS, PTS, and the ACS Companion Guide for Pilots. Because the FAA concurs and adopts these changes as submitted, the FAA does not find it necessary to respond to each individual comment with substantial rationale. Additionally, during the pendency of the rulemaking, the FAA identified certain modifications necessary to improve the quality of the documents. The FAA presents the following record of changes as implemented in the ACS and PTS incorporated by reference in this final rule and the companion guide.

TABLE 3—RECORD OF EDITORIAL/MINOR CHANGES

Document	Changes
FAA–G–ACS–2, Airman Certification Standards Companion Guide for Pilots.	1. Modified Applicant's Checklist to allow for ''printed or electronic'' Chart Supplement or AIM. 2. Replaced weather AC 00–6, AC 00–45, and AC 00–54 with the Aviation Weather Handbook (FAA–H–8083–28) in Section 5: References. 3. Revised acronym ''KOL'' to ''KOEL''. 4. Added AC 60–22, *Aeronautical Decision Making* to Section 5: References. 5. Removed FAA–H–8083–33 from Section 5: References.
All Airman Certification Standards	1. Added an introductory note in the Foreword referencing and explaining the ACS Companion Guide for Pilots. 2. Added Pilots Handbook of Aeronautical Knowledge (FAA–H–8083–25) and the Risk Management Handbook (FAA–H–8083–2) as a reference in various Tasks. 3. Replaced weather AC 00–6, AC 00–45, and AC 00–54 with the Aviation Weather Handbook (FAA–H–8083–28). 4. Revised weather task sub-element texts to current weather products. 5. Added legend with added ratings table acronym definitions in appendix 1, Practical Test Roles, Responsibilities, and Outcomes, where applicable. 6. Revised acronym ''KOL'' to ''KOEL'', as applicable. 7. Included information related to proficiency checks and English language proficiency in the appendix 1, Practical Test Roles, Responsibilities, and Outcomes, Evaluator Responsibilities section. 8. Edited Use of Flight Simulation Training Devices (FSTD) paragraph in appendix 3, Aircraft, Equipment, and Operational Requirements & Limitations.
All Airplane Airman Certification Standards	1. Standardized use of ASEL, ASES, AMEL, and AMES acronyms. 2. Added Major Enhancements Section for existing Airplane ACS providing a key of added and archived elements.

[88] For example, the ARAC ACS WG provided that an AKTR with code ''CA.I.C.K1.a'' did not correspond to anything because it was removed from the ACS version that was proposed to be incorporated by reference with this rulemaking (*i.e.,* FAA–S–ACS–7B). Additionally, because of the shuffling, upon finalization of this final rule and the revised ACS, a person would be unclear whether the AKTR code ''PA.VI.B.S6'' on their AKTR means ''uses proper communication procedures when utilizing radar services,'' as stated in FAA–S–ACS–6B, or ''maintain the selected altitude, ± 200 feet and heading, ± 15°,'' as stated in FAA–S–ACS–6C.

[89] The sub-elements listed as: K1a through K1h include: available navigational facilities, special use airspace, preferred routes, primary and alternate airports, enroute charts, chart supplements, NOTAMs, and terminal procedures publications (TPP). The sub-elements were also added in the Instrument-Helicopter ACS, Instrument-Powered-Lift ACS, and Flight Instructor-Instrument Powered Lift ACS.

[90] The FAA notes, however, that the requirement for the applicant to demonstrate satisfactory knowledge of the deficient elements pursuant to § 61.39(a)(6) remains in effect. In the case of an archived code, the applicant, and the authorized instructor in providing the endorsement, would use the ACS Companion Guide for Pilots to determine the specific subject area corresponding to that code.

TABLE 3—RECORD OF EDITORIAL/MINOR CHANGES—Continued

Document	Changes
FAA–S–ACS–11A, Airline Transport Pilot and Type Rating for Airplane Category Airman Certification Standards.	1. Corrected Table of Contents to include the Credit for Pilot Time in an ATD section. 2. Added AC 60–22, *Aeronautical Decision Making,* as a reference to AOO I, Preflight Preparation, Task F, Human Factors. 3. Added statement pertaining to certain training and checking programs in appendix 1, Practical Test Roles, Responsibilities, and Outcomes, Satisfactory Performance. 4. Added statement to appendix 3, Aircraft, Equipment, and Operational Requirements & Limitations, V. Stall Prevention, ''Other warnings, cautions, or alerts that do not meet the definition of a stall warning, such as a low airspeed warning, cannot be used as an indication of an impending stall for completion of these stall Tasks.''
FAA–S–ACS–25, Flight Instructor for Airplane Category Airman Certification Standards.	1. Corrected out-of-sequence knowledge sub-element of K6 in AOO I, Fundamentals of Instructing, Task D, Student Evaluation, Assessment, and Testing. 2. Removed the AOO II, Technical Subject Areas, Task H, Navigation Systems and Radar Services task skill element requiring an applicant to maintain the appropriate altitude. 3. Added a note specifying the minimum knowledge elements required in AOO II, Technical Subject Areas, Task P, One Engine Inoperative Performance. 4. Relocated information regarding previously developed lesson plans from the objective for AOO IV, Preflight Lesson on a Maneuver to be Performed in Flight, Task A, Maneuver Lesson, into a note. 5. Replaced phrase within AI.VII.E.K2 ''approach and landing performance'' with ''takeoff and climb performance''. 6. Revised phrase within AI.X.D.R5 from ''elevator stall'' to ''elevator trim stall''. 7. Formatting revisions within appendix 1, Practical Test Roles, Responsibilities, and Outcomes, Evaluator Responsibilities.
FAA–S–ACS–7B, Commercial Pilot for Airplane Category Airman Certification Standards.	1. Added 14 CFR 119.1(e) as a reference to the AOO I, Preflight Preparation, Task A, Pilot Qualifications. 2. Replaced phrase within CA.IV.E.K1 ''on approach and landing performance'' with ''on takeoff and climb performance''. 3. Added CA.VI.B.S5 element. 4. Revised phrase within CA.VII.C.R5 from ''elevator stall'' with ''elevator trim stall''. 5. Removed the complex airplane requirement statement from appendix 3, Aircraft, Equipment, and Operational Requirements & Limitations, Equipment Requirements & Limitations section.
FAA–S–ACS–6C, Private Pilot for Airplane Category Airman Certification Standards.	1. Replaced phrase within PA.IV.E.K1 ''on approach and landing performance'' with ''on takeoff and climb performance''. 2. Revised phrase within PA.VII.C.R5 from ''elevator stall'' with ''elevator trim stall''. 3. Revised AOO VIII, Basic Instrument Maneuvers, Task E, Recovery from Unusual Flight Attitudes,[91] PA.VIII.E.R7 element text from ''High G situations'' to ''Operating envelope considerations''. 4. Removed the complex airplane requirement statement from appendix 3, Aircraft, Equipment, and Operational Requirements & Limitations, Equipment Requirements & Limitations section.
FAA–S–ACS–8C, Instrument Rating—Airplane Airman Certification Standards.	1. Added note to AOO I, Preflight Preparation, Task C, Cross-Country Flight Planning, regarding use of a computer-generated flight plan. 2. Removed instructor designation[92] within appendix 1, Practical Test Roles, Responsibilities, and Outcomes, Instrument Proficiency Check.
All Powered-Lift Airman Certification Standards	1. Replaced ''VTOL'' and ''cruise'' with ''thrust-borne flight,'' ''semi-wing borne flight,'' and ''wing-borne flight,'' as applicable. 2. Replaced the term ''conversion/transition'' with ''conversion,'' as applicable. 3. Replaced ''conversion angle'' with ''thrust vector angle,'' as applicable. 4. Removed FAA–H–8083–33 as a reference.
FAA–S–ACS–27, Flight Instructor for Powered-Lift Category Airman Certification Standards.	1. Removed AOO II, Technical Subject Areas, Task H, Navigation Systems and Radar Services element, IL.II.H.S6, requiring an applicant to maintain the appropriate altitude. 2. Relocated previously developed lesson plan information for AOO IV, Preflight Lesson on a Maneuver to be Performed in Flight from ''objective'' to ''note''. 3. Specified checklists to be completed in element IL.VIII.G.S1 of AOO VIII, Takeoffs, Landings, and Go-Arounds, Task G, Running/Roll-On Landing (*i.e.*, approach and landing checklists). 4. Added note to AOO XII, Slow Flight and Stalls, clarifying minimum Task selection. 5. Added note to AOO XIV, Emergency Operations, and AOO XV, Special Operations, clarifying minimum Task selection. 6. Formatting revisions within appendix 1. Practical Test Roles, Responsibilities, and Outcomes.
FAA–S–ACS–2, Commercial Pilot for Powered-Lift Category Airman Certification Standards.	1. Added 14 CFR 119.1(e) as a reference to AOO I, Preflight Preparation, Task A, Pilot Qualifications. 2. Specified checklists to be completed in CP.V.G.S1 of AOO V, Takeoffs, Landings, and Go-Arounds, Task G, Running/Roll-On Landing (*i.e.*, the approach and landing checklists). 3. Revised ''Addition of a Powered-Lift Rating to an Existing Commercial Pilot Certificate'' table to specify that selection requirements for Tasks are set forth in the body of the ACS (defined by an asterisk) rather than a requirement to test all tasks under that AOO.

TABLE 3—RECORD OF EDITORIAL/MINOR CHANGES—Continued

Document	Changes
FAA–S–ACS–13, Private Pilot for Powered-Lift Category Airman Certification Standards.	1. Added sub-element (e) to AOO I, Preflight Preparation, Task B, Airworthiness Requirements, PL.I.B.K1 (Owner/Operator and pilot-in-command responsibilities). 2. Specified checklists to be completed in PL.V.G.S1 of AOO V, Takeoffs, Landings, and Go-Arounds, Task G, Running/Roll-On Landing (*i.e.,* the approach and landing checklists). 3. Added PL.VIII.B.S5 to AOO VIII, Navigation, Task B, Navigation and Radar Services (Recognize signal loss or interference and take appropriate action, if applicable). 4. Revised ''Addition of a Powered-Lift Rating to an Existing Private Pilot Certificate'' table to specify that selection requirements for Tasks are set forth in the body of the ACS (defined by an asterisk) rather than a requirement to test all tasks under that AOO.
FAA–S–ACS–28, Flight Instructor—Instrument Rating Powered-Lift Airman Certification Standards.	1. Corrected prefix of ACS Codes for AOO II, Technical Subject Areas, Task E, Regulations and Publications Related to Instrument Flight Operations. 2. Added note to AOO III, Preflight Preparation, Task B, Cross-Country Flight Planning regarding use of a computer-generated flight plan. 3. Relocated information regarding previously developed lesson plans from the objective for AOO IV, Preflight Lesson on a Maneuver to be Performed in Flight, Task A, Maneuver Lesson, into a note. 4. Formatting revisions within appendix 1. Practical Test Roles, Responsibilities, and Outcomes. 5. Added instructions to appendix 2 for the evaluator in the case of Task failure due to ADM considerations.
FAA–S–ACS–3, Instrument Rating—Powered-Lift Airman Certification Standards.	1. Added note to AOO I, Preflight Preparation, Task C, Cross-Country Flight Planning, regarding use of a computer-generated flight plan. 2. Removed instructor designation within appendix 1, Practical Test Roles, Responsibilities, and Outcomes, Instrument Proficiency Check.
FAA–S–ACS–29, Flight Instructor for Rotorcraft Category Helicopter Rating Airman Certification Standards.	1. Added the Helicopter Instructor's Handbook (FAA–H–8083–4) as a reference to various tasks. 2. Corrected AOO II, Technical Subject Areas, Task I, Navigation Systems and Radar Services, by removing proposed HI.II.I.R5 element requiring the use of autopilot to make appropriate course intercepts (if installed and at the evaluator's discretion) and adding a new task element requiring use of an EFB (if used). 3. Removed the AOO II, Technical Subject Areas, Task I, Navigation Systems and Radar Services task skill element HI.II.I.S5 requiring an applicant Recognize loss of navigational signal and take appropriate action. 4. Removed the AOO II, Technical Subject Areas, Task I, Navigation Systems and Radar Services task element HI.II.I.S7 requiring an applicant to maintain the appropriate altitude. 5. Relocated information regarding previously developed lesson plans from the objective for AOO IV, Preflight Lesson on a Maneuver to be Performed in Flight, Task A, Maneuver Lesson, into a note. 6. Changed AOO V, Preflight Procedures, Task D, Before Takeoff Check, HI.V.D.R1 element from ''NTSB accident reporting'' to ''Division of Attention while conducting before takeoff checks''. 7. Added risk element HI.V.D.R3, ''Hazardous effects of downwash'' to AOO V, Preflight Procedures, Task D, Before Takeoff Check. 8. Added notes to AOO VI (Airport and Heliport Operations), AOO VII (Hovering Maneuvers), AOO VIII (Takeoffs, Landings, and Go-Arounds), and AOO X (Performance Maneuvers) clarifying minimum Task selection. 9. Revised title of AOO VIII, Takeoffs, Landings, and Go-Arounds, Task B, from ''Normal Approach and Landing'' to ''Normal and Crosswind Approach''. 10. Revised element HI.X.B.S9 in AOO X, Performance Maneuvers, Task B, Straight-in-Autorotation in a Single-Engine Helicopter for clarity. 11. Reworded objective of AOO X, Performance Maneuvers, Task C, Autorotation With Turns in a Single-Engine Helicopter, to remove redundancy. 12. Aligned AOO XI, Emergency Operations, Task E, Recovery from Unusual Flight Attitudes, HI.XI.E.S1 [93] to the Instrument Helicopter ACS. 13. Provided additional guidance to evaluators regarding operations at the start or completion of a maneuver within appendix 1, in the Evaluator Responsibilities section. 14. Formatting revisions within appendix 1. Practical Test Roles, Responsibilities, and Outcomes. 15. Clarified the requirement in appendix 3, Aircraft, Equipment, and Operational Requirements & Limitations, in the Single and Multiengine Helicopters section that an applicant must provide a single-engine helicopter capable of demonstrating touchdown autorotations. 16. Added information to appendix 3, Aircraft, Equipment, and Operational Requirements & Limitations, to indicate that the briefing in reference to AOO XI, Emergency Operations, Task E, Recovery from Unusual Flight Attitudes, must address any hazards associated with the rotor system.
FAA–S–ACS–16, Commercial Pilot for Rotorcraft Category Helicopter Rating Airman Certification Standards.	1. Added 14 CFR 119.1(e) as a reference to AOO I, Preflight Preparation, Task A, Pilot Qualifications. 2. Added FAA–H–8083–21 to AOO I, Preflight Preparation, Task C, Weather Information. 3. Revised title of AOO V, Takeoffs, Landings, and Go-Arounds, Task B, from ''Normal Approach and Landing'' to ''Normal and Crosswind Approach''. 4. Revised CH.VI.B.S9 in AOO VI, Performance Maneuvers, Task B, Straight-in-Autorotation in a Single-Engine Helicopter for clarity.

TABLE 3—RECORD OF EDITORIAL/MINOR CHANGES—Continued

Document	Changes
	5. Added risk element CH.VIII.B.R7, ''Powerplant failure during the maneuver'', to AOO VIII, Emergency Operations, Task B, Powerplant Failure at Altitude in a Single-Engine Helicopter. 6. Aligned AOO VIII, Emergency Operations, Task M, Recovery from Unusual Flight Attitudes, CH.VIII.M.S1 [94] to the Instrument Helicopter ACS. 7. Provided additional guidance to evaluators regarding operations at the start or completion of a maneuver within appendix 1 in the Evaluator Responsibilities section. 8. Added a note to the added ratings table explaining asterisks in the appendix 1, Practical Test Practical Test Roles, Responsibilities, and Outcomes. 9. Added information to appendix 3, Aircraft, Equipment, and Operational Requirements & Limitations, in reference to AOO VIII, Emergency Operations, Task M, Recovery from Unusual Flight Attitudes that the briefing must address any hazards associated with the rotor system.
FAA–S–ACS–15, Private Pilot for Rotorcraft Category Helicopter Rating Airman Certification Standards.	1. Added FAA–H–8083–21 to AOO I, Preflight Preparation, Task C, Weather Information. 2. Designated task selection for AOO IV, Hovering Maneuvers, and AOO V, Takeoffs, Landings, and Go-Arounds when an applicant provides a helicopter with wheel-type landing gear. 3. Revised title of AOO V, Takeoffs, Landings, and Go-Arounds, Task B, from ''Normal Approach and Landing'' to ''Normal and Crosswind Approach''. 4. Revised element PH.VI.B.S9 in AOO VI, Performance Maneuvers, Task B, Straight-in-Autorotation in a Single-Engine Helicopter for clarity. 5. Added risk element PH.VIII.B.R7, ''Powerplant failure during the maneuver,'' to AOO VIII, Emergency Operations, Task B, Powerplant Failure at Altitude in a Single-Engine Helicopter. 6. Provided additional guidance to evaluators regarding operations at the start or completion of a maneuver within appendix 1 in the Evaluator Responsibilities section. 7. Revised ''Addition of a Rotorcraft Category Helicopter Rating to an Existing Private Pilot Certificate'' table to specify that selection requirements for Tasks are set forth in the body of the ACS (defined by an asterisk) rather than a requirement to test all tasks under that AOO.
FAA–S–ACS–14, Instrument Rating—Helicopter Airman Certification Standards.	1. Added note to AOO I, Preflight Preparation, Task C, Cross-Country Flight Planning, regarding use of a computer-generated flight plan. 2. Added note below ''Addition of a Helicopter Rating to an Existing Instrument Rating Certificate'' table in appendix 1 indicating that AOO VII, Emergency Operations, Task B, Instrument Approach and Landing with an Inoperative Engine (Simulated) (Multiengine Helicopter Only), applies only if the applicant supplies a multiengine helicopter. 3. Removed instructor designation within appendix 1, Practical Test Roles, Responsibilities, and Outcomes, Instrument Proficiency Check. 4. Added to appendix 3, Aircraft, Equipment, and Operational Requirements & Limitations, in reference to AOO IV, Flight by Reference to Instruments, Task B, Recovery from Unusual Flight Attitudes that the briefing must address any hazards associated with the rotor system.
All PTS	1. Replaced Area Forecast (FA) with Graphical Forecasts for Aviation (GFA), as applicable. 2. Replaced weather AC 00–6, AC 00–45, and AC 00–54 with the Aviation Weather Handbook (FAA–H–8083–28). 3. Replaced A/FD with Chart Supplements.
FAA–S–8081–8C, Flight Instructor Practical Test Standards for Glider Category.	1. Replaced the Soaring Flight Manual with the Glider Flying Handbook (FAA–H–8083–13). 2. Revised AOO II, Technical Subject Areas, Task A, Aeromedical Factors, element 10 to, ''Stress and Fatigue causes, effects, and corrective actions''. 3. Added AOO II, Technical Subject Areas, Task A, Aeromedical Factors, element 11, ''Visual Illusions''.
FAA–S–8081–23B, Commercial Pilot Practical Test Standards for Glider Category.	1. Added AOO I, Preflight Preparation, Task C, Weather Information, element 1.c, ''Contents of a standard briefing and soaring forecast''. 2. Added AOO I, Preflight Preparation, Task F, Aeromedical Factors, element 1.i, ''Visual Illusions.'' 3. Revised AOO III, Airport and Gliderport Operations, Task C, Airport, Runway, and Taxiway, Signs, Marking, and Lighting, element 1, to align with task description.
FAA–S–8081–22A, Private Pilot Practical Test Standards for Glider Category.	1. Replaced the Soaring Flight Manual with The Glider Flying Handbook (FAA–H–8083–13). 2. Added AOO I, Preflight Preparation, Task B, Weather Information, element 1.c, ''Contents of a standard briefing and soaring forecast''. 3. Added AOO I, Preflight Preparation, Task E, Aeromedical Factors, element 1.i, ''Visual Illusions.'' 4. Revised AOO III, Airport and Gliderport Operations, Task C, Airport, Runway, and Taxiway Signs, Markings, and Lighting, element 1, to align with task description.
FAA–S–8081–17A, Private Pilot Practical Test Standards for Lighter-Than-Air Category.	1. Changed AOO I, Preflight Preparation, Task A, Certificates and Documents, element 1.b, from ''medical statement'' to ''medical fitness''. 2. Restored checklist usage element in AOO IV, Launches and Landings, Task B, Launch Over Obstacle; AOO VI, Navigation, Task A, Navigation; and AOO VII, Emergency Equipment, Task B, Emergency Equipment and Survival Gear.
FAA–S–8081–32A, Private Pilot Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Aircraft Category.	1. Corrected inconsistent Weight-Shift-Control hyphenation.
FAA–S–8081–31A, Sport Pilot and Sport Pilot Flight Instructor Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Category.	1. Corrected inconsistent Weight-Shift-Control hyphenation.

TABLE 3—RECORD OF EDITORIAL/MINOR CHANGES—Continued

Document	Changes
FAA–S–8081–9E, Flight Instructor Instrument Practical Test Standards for Airplane Rating and Helicopter Rating.	1. Replaced TIBS and TWEB with sources of weather data in AOO III, Preflight Preparation, Task A, Weather Information, element 1.b and removed from abbreviations/acronyms list. 2. Corrected ''Pilot heat'' to read ''Pitot heat''. 3. Removed Stability Chart from element 2.h in AOO III, Preflight Preparation, Task A, Weather Information.
FAA–S–8081–10E, Aircraft Dispatcher Practical Test Standards.	1. Removed EWINS from AOO I, Flight Planning/Dispatch Release, Task C, Weather Observation, Analysis, and Forecasts. 2. Removed footnote 4 regarding AELS in AOO I, Flight Planning/Dispatch Release, Task E, Aircraft Systems, Performance, and Limitations. 3. Removed approaches list from element 5 in AOO IV, Arrival, Approach, and Landing Procedures, Task A, ATC and Air Navigation Procedures. 4. Removed ETOPS, EWINS, PAR, and PRM from Acronyms/Abbreviations list.

E. Out of Scope

The FAA received multiple comments that were considered out of scope. This section summarizes such comments and provides a brief response.

One commenter stated that part 141 pilot schools and part 142 training centers should be required to report disapprovals or unsatisfactory results on final progress checks to the pilot records database, so all pilots are treated equally. The FAA notes that the pilot records database facilitates the sharing of pilot records among those air carriers, operators, and entities set forth by 14 CFR 111.1. The applicability provisions of the part 111 pilot records database do not include either part 141 pilot schools or part 142 air agencies, nor did the FAA contemplate adding disapprovals for unsatisfactory checks to part 111 in the NPRM.[95]

One commenter expressed concern about the testing standards in part 65 for airmen other than flight crewmembers. Specifically, the commenter stated that, while the written exam (knowledge test) and oral exam for mechanics are graded to a minimum 70% passing score, the practical test for mechanics should be passed to a 100% score. The FAA notes that passing rate for all part 65 tests is set forth in § 65.17(b) and applies to those tests for applicants of an air traffic control, aircraft dispatcher, mechanic, repairman, and parachute rigger certificate. This rulemaking did not propose any changes to the passing rates for any airmen testing and, therefore, considers any changes to the required score outside of the scope of this final rule. The FAA may consider rulemaking on this topic at a future date.

One commenter asked if the definition of autorotation in 14 CFR part 1 required a change to include powered-lift aircraft, as it currently only applies to rotorcraft. First, the FAA notes that the powered-lift ACS do not use the term ''autorotation.'' Further, the FAA did not propose any changes to definitions within 14 CFR 1.1 and, therefore, considers changing the definition of autorotation out of the scope of this rulemaking. As previously discussed in this preamble, the powered-lift rulemaking project is the more appropriate vehicle to contemplate discrete issues in the certification of powered-lift and airmen that will operate such aircraft, including the applicability of autorotation as a term. The FAA will reconcile the powered-lift final rule with this final rule, as applicable.

The ARAC ACS WG commented that the ground instructor certificate should have its own ACS incorporated by reference. Subpart I of part 61 governs the requirements for the issuance and conditions and limitations of ground instructor certificates and ratings. Among other eligibility requirements, a ground instructor is required to take only a knowledge test;[96] there is no practical test associated with a ground instructor certificate or rating. Therefore, the FAA did not draft a ground instructor PTS or ACS. Additionally, as the regulated community would not have had an opportunity to inspect the draft, it would obviate notice and comment procedures under the APA. Therefore, at this time, a ground instructor standard is out of scope of this rulemaking but may be considered at a future date.

One commenter made several suggestions to address vertical flight infrastructure standards such as heliports, helistops, helidecks, Emergency Helicopter Landing Facilities (EHLF), Predesignated Emergency Landing Areas (PELA), vertiports, vertistops and droneports. The commenter expressed that these vertical flight infrastructure elements are safety sensitive, and yet there are little to no test questions about this subject area, resulting in little training. The commenter asserted that education materials must contain information about this subject area before test questions and, thus, requested the FAA to include vertical flight infrastructure subject matter into certain handbooks, and, eventually, the powered-lift and helicopter ACS. The FAA notes that it can revise information in handbooks outside of rulemaking, as the APA does not apply to these guidance documents, and the FAA may do so to account for future ACS updates. Additionally, the majority of the helicopter and powered-lift ACS include the area of operation ''Airport and Heliport Operations,'' which should encompass testing (and training) regarding these assets that comprise vertical infrastructure.

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other

[91] See section IV.C. of this preamble for additional information on changes to the elements within this task due to coding.

[92] Because the FAA designates instructors giving an IPC as evaluators, the term ''evaluator'' would inherently include instructors.

[93] As discussed in section VI.B.2.iii of this preamble, the adopted Flight Instructor for Rotorcraft Category Helicopter Rating ACS adds the task Flight Solely by Reference to Instruments as AOO X, Task D. As a result, the lettering in the subsequent tasks shifted by one letter. Therefore, this element appeared in the proposed ACS as HI.XI.D.S1 under the Recovery from Unusual Flight Attitudes Task D, now Task E.

[94] As discussed in section VI.B.2.iii of this preamble, the adopted Commercial Pilot for Rotorcraft Category Helicopter Rating ACS adds the task Flight Solely by Reference to Instruments as AOO VIII, Task L. As a result, the lettering in the subsequent tasks shifted by one letter. Therefore, this element appeared in the proposed ACS as CH.VIII.L.S1 under the Recovery from Unusual Flight Attitudes Task L, now Task M.

[95] In 2010, Congress directed the Administrator to establish the pilot records database. 49 U.S.C. 44703(i). The plain language of the statute only permits the FAA to require employers of pilots to report records. Part 142 training centers and part 141 pilot schools do not qualify as the employers of the pilots who receive training and checking. See *Pilot Records Database,* 86 FR 31016 (Jun. 10, 2021).

[96] 14 CFR 61.213.

requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177,000,000, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA determined that this rule: will result in benefits that justify costs; is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 as amended by Executive Order 14094; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

A. Regulatory Evaluation

On December 12, 2022, the FAA published a Notice of Proposed Rulemaking (NPRM) and received comments from 39 individuals and organizations on the proposed rule. However, none of these comments expressed concerned with economic impacts of the proposal. Therefore, this regulatory evaluation has no new changes over the regulatory analyses provided in the NPRM.

Through this rulemaking, the FAA incorporated certain PTS and ACS by reference into parts 61, 63, and 65 so the standards carry the full force and effect of regulation. Because of the unique nature of the PTS and ACS documents, which are lengthy and contain complex and technical tables, the FAA used the mechanism of IBR. IBR allows Federal agencies to comply with the requirements of the APA to publish rules in the **Federal Register** and the Code of Federal Regulations by referring to material published elsewhere. Material that is incorporated by reference has the same legal status as if it were published in full in the **Federal Register** and the Code of Federal Regulations.

1. Baseline for the Analysis

Title 14 CFR parts 61, 63, and 65 prescribe the requirements for airmen to obtain a certificate and/or rating. Each part contains the general requirements for eligibility, aeronautical knowledge, flight proficiency, and aeronautical experience requirements, as applicable, for each certificate and/or rating sought. This generally includes the requirement to pass a practical test specific to the certificate and/or rating sought.

The PTS and the ACS impose requirements on all persons seeking an airman certificate and/or rating. The PTS and ACS require an applicant seeking a certificate and/or rating to complete specific tasks and maneuvers to a minimum given standard in order to obtain the applicable certificate and/or rating. As such, if an applicant does not perform a task to the prescribed standard, found in the applicable ACS or PTS, the applicant cannot obtain the applicable certificate and/or rating. Unsatisfactory performance results in a notice of disapproval and/or denial of the certificate and/or rating. The PTS and the ACS, which are finalized by this rule to be incorporated by reference, are the testing standards that are already in use or the process by which the practical test is conducted.

2. Benefits

The mechanism of IBR allows Federal Agencies to comply with the requirement to publish rules in the **Federal Register** and the CFR by referring to material already published elsewhere.[97] IBR functions to substantially reduce the size of 14 CFR parts 61, 63, and 65, which would otherwise require the PTS and ACS to be replicated in their entirety into the regulations, resulting in hundreds of additional pages including complex and technical tables that would be unsuitable for the CFR. The FAA will continue to draw on the expertise and resources of the aviation industry to develop and update the testing standards and strengthen private-public collaboration and transparency. IBR will maintain public and private industry collaboration. Additionally, while the practical tests are currently conducted in accordance with the PTS and ACS, applicants for a certificate and/or rating, and pilots completing proficiency checks, will be better informed about the exact tasks and objectives required to successfully complete each area of operation because evaluators will be required to test on the exact tasks contained in the applicable PTS and/or ACS. Further, instructors are encouraged to utilize the applicable ACS and/or PTS during training to ensure applicants are equipped with the knowledge and proficiency to successfully complete a practical test or proficiency check. Applicants and instructors are, therefore, benefitted by transparency and specificity in test preparation.

3. Costs

The FAA has evaluated the cost impacts to the stakeholders involved in this final rule, which includes airmen and the FAA. As discussed in the NPRM preamble, the FAA noted the addition of tasks within four ACS (Commercial Pilot for Airplane Category ACS, Private Pilot for Rotorcraft Category Helicopter Rating ACS, Commercial Pilot for Rotorcraft Category Helicopter Rating ACS, and Flight Instructor for Rotorcraft Category Helicopter Rating ACS).[98] Additionally, since the NPRM, the FAA notes the addition of the task Flight Solely by Reference to Instruments within two ACS (Flight Instructor for Rotorcraft Category Helicopter Rating ACS and Commercial Pilot for Rotorcraft Category Helicopter Rating ACS) from an outgrowth of ARAC ACS WG comments.[99] The FAA determined these additions would add negligible amount of time to the completion of ACS, but will have no quantifiable cost impact. These added tasks may be completed concurrently with tasks already required on the transitioned

[97] IBR Handbook, Office of the Federal Register (June, 2023).

[98] Specifically, the NPRM highlighted tasks in the proposed ACS: (1) the Forward Slip to the Landing task requirement (see note following Addition of an Airplane Single-Engine Land Rating to an Existing Commercial Pilot Certificate) in the Commercial Pilot for Airplane Category ACS; (2) the Approach and Landing with One Engine Inoperative task (AOO VII, Task C) in the Private Pilot for Rotorcraft Category Helicopter Rating ACS; (3) the Anti-Torque System Failure (Oral Only) task (AOO VIII, Task G), the Recovery from Unusual Flight Attitudes task (AOO VIII, Task M), and the Night Operations task (AOO I, Task I) in the Commercial Pilot for Rotorcraft Category Helicopter Rating ACS; and (4) the Recovery from Unusual Flight Attitudes task (AOO XI, Task E) in the Flight Instructor for Rotorcraft Category Helicopter Rating ACS. *See* 87 FR 75962.

[99] See section IV.B.2.iii of this preamble for additional discussion on this task.

ACS and add a few minutes to the requisite practical test. In sum, the FAA anticipates this final rule will result in no additional cost impacts to airmen and the FAA.

i. Applicants and Airmen

The FAA does not anticipate new costs to applicants for an initial certificate and/or rating and existing airmen (*e.g.,* pilots completing proficiency checks, pilots seeking additional certificates and/or ratings) because there are no substantive changes to the testing processes, areas of operation, or elements upon which airmen are currently tested in order to obtain a certificate, as the practical tests are already conducted in accordance with the applicable ACS/PTS. Rather, this rule incorporates the documents by reference into the regulations to ensure compliance with the APA and provide the public with requisite notice and an opportunity to comment. Therefore, applicants seeking a certificate and/or rating and currently certificated pilots performing proficiency checks will not incur additional costs.

ii. The FAA

The FAA does not anticipate new costs to the agency because the FAA is not changing the process by which testing is conducted or the manner in which PTS and ACS are currently implemented.

4. Regulatory Alternatives

The FAA did not consider regulatory alternatives for this final rule as there are no legally supportable alternatives to mandating the requirements for airman certification and ensuring consistent standards for airman certificates and ratings.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), require Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The FAA has not identified any small entities that would be affected by the final rule because this rule does not affect the content of the practical test or how the practical test is currently conducted. While there are many small entities that employ persons who conduct practical tests on behalf of the Administrator and administer proficiency checks for airmen, there are no changes to these existing procedures and exams, in practice (*i.e.,* evaluators already utilize the applicable ACS and/or PTS). Therefore, for the reasons provided, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effects of this rule and finds it does not create an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that this final rule will not result in the expenditure of $177 million or more by State, local, or Tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[100] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[101] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal

[100] 65 FR 67249 (Nov. 6, 2000).

[101] FAA Order No. 1210.20 (Jan. 28, 2004), available at *https://www.faa.gov/documentLibrary/media/1210.pdf.*

government and Indian tribes; or to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this final rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FAA has determined that it is not a ''significant energy action'' under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will have no effect on international regulatory cooperation.

VII. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this final rule was placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Incorporation by reference, Recreation and recreation areas, Reporting and recordkeeping requirements, Teachers.

14 CFR Part 63

Aircraft, Airmen, Aviation safety, Incorporation by reference, Navigation (air), Reporting and recordkeeping requirements.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Aviation safety, Incorporation by reference, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302; Sec. 2307 Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); and sec. 318, Pub. L. 115–254, 132 Stat. 3186 (49 U.S.C. 44703 note).

■ 2. Add § 61.14 to read as follows:

§ 61.14 Incorporation by Reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Federal Aviation Administration (FAA) and at the National Archives and Records Administration (NARA). Contact FAA, Training and Certification Group, 202–267–1100, *ACSPTSinquiries@faa.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591, 866–835–5322, *www.faa.gov/training_testing.*

(a) *Practical Test Standards.* (1) FAA–S–8081–3B, Recreational Pilot Practical Test Standards for Airplane Category and Rotorcraft Category, November 2023; IBR approved for § 61.43 and appendix A to this part.

(2) FAA–S–8081–7C, Flight Instructor Practical Test Standards for Rotorcraft Category Gyroplane Rating, November 2023; IBR approved for § 61.43 and appendix A to this part.

(3) FAA–S–8081–8C, Flight Instructor Practical Test Standards for Glider Category, November 2023; IBR approved for § 61.43 and appendix A to this part.

(4) FAA–S–8081–9E, Flight Instructor Instrument Practical Test Standards for Airplane Rating and Helicopter Rating, November 2023; IBR approved for § 61.43 and appendix A to this part.

(5) FAA–S–8081–15B, Private Pilot Practical Test Standards for Rotorcraft Category Gyroplane Rating, November 2023; IBR approved for § 61.43 and appendix A to this part.

(6) FAA–S–8081–16C, Commercial Pilot Practical Test Standards for Rotorcraft Category Gyroplane Rating, November 2023; IBR approved for § 61.43 and appendix A to this part.

(7) FAA–S–8081–17A, Private Pilot Practical Test Standards for Lighter-Than-Air Category, November 2023; IBR approved for § 61.43 and appendix A to this part.

(8) FAA–S–8081–18A, Commercial Pilot Practical Test Standards for Lighter-Than-Air Category, November 2023; IBR approved for § 61.43 and appendix A to this part.

(9) FAA–S–8081–20A, Airline Transport Pilot and Aircraft Type Rating Practical Test Standards for Rotorcraft Category Helicopter Rating, November 2023; IBR approved for §§ 61.43 and 61.58, and appendix A to this part.

(10) FAA–S–8081–22A, Private Pilot Practical Test Standards for Glider Category, November 2023; IBR approved for § 61.43 and appendix A to this part.

(11) FAA–S–8081–23B, Commercial Pilot Practical Test Standards for Glider Category, November 2023; IBR approved for § 61.43 and appendix A to this part.

(12) FAA–S–8081–29A, Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Airplane Category, Rotorcraft Category, and Glider Category, November 2023; IBR approved for §§ 61.43, 61.321, and 61.419, and appendix A to this part.

(13) FAA–S–8081–30A, Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Lighter-Than-Air Category, November 2023; IBR approved for §§ 61.43, 61.321, and 61.419, and appendix A to this part.

(14) FAA–S–8081–31A, Sport Pilot and Sport Pilot Flight Instructor Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Aircraft Category, November 2023; IBR approved for §§ 61.43, 61.321, and 61.419, and appendix A to this part.

(15) FAA–S–8081–32A Private Pilot Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Aircraft Category, November 2023; IBR approved for § 61.43 and appendix A to this part.

(b) *Airman Certification Standards.* (1) FAA–S–ACS–2, Commercial Pilot for Powered-Lift Category Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(2) FAA–S–ACS–3, Instrument Rating—Powered-Lift Airman Certification Standards, November 2023; IBR approved for §§ 61.43 and 61.57, and appendix A to this part.

(3) FAA–S–ACS–6C, Private Pilot for Airplane Category Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(4) FAA–S–ACS–7B, Commercial Pilot for Airplane Category Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(5) FAA–S–ACS–8C, Instrument Rating—Airplane Airman Certification Standards, November 2023; IBR approved for §§ 61.43 and 61.57, and appendix A to this part.

(6) FAA–S–ACS–11A, Airline Transport Pilot and Type Rating for Airplane Category Airman Certification Standards, November 2023; IBR approved for §§ 61.43 and 61.58, and appendix A to this part.

(7) FAA–S–ACS–13, Private Pilot for Powered-Lift Category Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(8) FAA–S–ACS–14, Instrument Rating—Helicopter Airman Certification Standards, November 2023; IBR approved for §§ 61.43 and 61.57, and appendix A to this part.

(9) FAA–S–ACS–15, Private Pilot for Rotorcraft Category Helicopter Rating Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(10) FAA–S–ACS–16, Commercial Pilot for Rotorcraft Category Helicopter Rating Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(11) FAA–S–ACS–17, Airline Transport Pilot and Type Rating for Powered-Lift Category Airman Certification Standards, November 2023; IBR approved for §§ 61.43 and 61.58, and appendix A to this part.

(12) FAA–S–ACS–25, Flight Instructor for Airplane Category Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(13) FAA–S–ACS–27, Flight Instructor for Powered-Lift Category Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(14) FAA–S–ACS–28, Flight Instructor—Instrument Rating Powered-Lift Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

(15) FAA–S–ACS–29, Flight Instructor for Rotorcraft Category Helicopter Rating Airman Certification Standards, November 2023; IBR approved for § 61.43 and appendix A to this part.

■ 3. Amend § 61.43 by revising paragraphs (a)(1) through (3) to read as follows:

§ 61.43 Practical tests: General procedures.

(a) * * *

(1) Performing the tasks specified in the areas of operation contained in the applicable Airman Certification Standards or Practical Test Standards (incorporated by reference, see § 61.14) as listed in appendix A of this part for the airman certificate or rating sought;

(2) Demonstrating mastery of the aircraft by performing each task required by paragraph (a)(1) of this section successfully;

(3) Demonstrating proficiency and competency of the tasks required by paragraph (a)(1) of this section within the approved standards; and

* * * * *

■ 4. Amend § 61.57 by revising paragraph (d)(1) introductory text to read as follows:

§ 61.57 Recent Flight Experience: Pilot in Command.

* * * * *

(d) * * *

(1) Except as provided in paragraph (e) of this section, a person who has failed to meet the instrument experience requirements of paragraph (c) of this section for more than six calendar months may reestablish instrument currency only by completing an instrument proficiency check. The instrument proficiency check must include the areas of operation contained in the applicable Airman Certification Standards (incorporated by reference, see § 61.14) as listed in appendix A of this part as appropriate to the rating held.

* * * * *

■ 5. Amend § 61.58 by revising paragraph (d)(1) to read as follows:

§ 61.58 Pilot in command proficiency check: Operation of an aircraft that requires more than one pilot flight crewmember or is turbojet-powered.

* * * * *

(d) * * *

(1) A pilot-in-command proficiency check conducted by a person authorized by the Administrator, consisting of the areas of operation contained in the applicable Airman Certification Standards or Practical Test Standards (incorporated by reference, see § 61.14); as listed in appendix A of this part appropriate to the rating held, in an aircraft that is type certificated for more than one pilot flight crewmember or is turbojet powered;

* * * * *

■ 6. Amend § 61.157 by revising paragraphs (e) introductory text, and (e)(1) through (3) to read as follows:

§ 61.157 Flight proficiency.

* * * * *

(e) *Areas of Operation.* A practical test will include normal and abnormal procedures, as applicable, within the areas of operation for practical tests for an airplane category and powered-lift category rating.

(1) For an airplane category—single engine class rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoffs and Landings;

(iv) In-flight maneuvers;

(v) Stall Prevention;

(vi) Instrument procedures;

(vii) Emergency operations; and

(viii) Postflight procedures.

(2) For an airplane category—multiengine class rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoffs and Landings;

(iv) In-flight maneuvers;
(v) Stall Prevention.
(vi) Instrument procedures;
(vii) Emergency operations; and
(viii) Postflight procedures.
(3) For a powered-lift category rating:
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoffs and Departure phase;
(iv) In-flight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Emergency operations; and
(viii) Postflight procedures.

* * * * *

■ 7. Amend § 61.321 by revising paragraph (b) to read as follows:

§ 61.321 How do I obtain privileges to operate an additional category or class of light-sport aircraft?

* * * * *

(b) Successfully complete a proficiency check from an authorized instructor, other than the instructor who trained you, consisting of the tasks in the appropriate areas of operation contained in the applicable Practical Test Standards (incorporated by reference, see § 61.14) as listed in appendix A of this part for the additional light-sport aircraft privilege you seek;

* * * * *

■ 8. Amend § 61.419 by revising paragraph (b) to read as follows:

§ 61.419 How do I obtain privileges to provide training in an additional category or class of light-sport aircraft?

* * * * *

(b) Successfully complete a proficiency check from an authorized instructor, other than the instructor who trained you, consisting of the tasks in the appropriate areas of operation contained in the applicable Practical Test Standards (incorporated by reference, see § 61.14) as listed in appendix A of this part for the additional category and class flight instructor privilege you seek;

* * * * *

■ 9. Add appendix A to part 61 to read as follows:

Appendix A to Part 61—Airman Certification Standards and Practical Test Standards

If you are seeking this certificate, rating, and/or privilege . . .	Then this ACS/PTS (incorporated by reference, see § 61.14) is applicable:
Airline Transport Pilot Certificate; Airplane Category—Single-Engine Land Rating, Airplane Category—Single-Engine Sea Rating, Airplane Category—Multiengine Land Rating, Airplane Category—Multiengine Sea Rating.	FAA–S–ACS–11A, Airline Transport Pilot and Type Rating for Airplane Category Airman Certification Standards, November 2023.
Airline Transport Pilot Certificate; Rotorcraft Category—Helicopter Rating.	FAA–S–8081–20A, Airline Transport Pilot and Aircraft Type Rating Practical Test Standards for Rotorcraft Category Helicopter Rating, November 2023.
Airline Transport Pilot Certificate; Powered-Lift Category	FAA–S–ACS–17, Airline Transport Pilot and Type Rating for Powered-Lift Category Airman Certification Standards, November 2023.
Commercial Pilot Certificate; Airplane Category—Single-Engine Land Rating, Airplane Category—Single-Engine Sea Rating, Airplane Category—Multiengine Land Rating, Airplane Category—Multiengine Sea Rating.	FAA–S–ACS–7B, Commercial Pilot for Airplane Category Airman Certification Standards, November 2023.
Commercial Pilot Certificate; Rotorcraft Category—Helicopter Rating	FAA–S–ACS–16, Commercial Pilot for Rotorcraft Category Helicopter Rating Airman Certification Standards, November 2023.
Commercial Pilot Certificate; Rotorcraft Category—Gyroplane Rating	FAA–S–8081–16C, Commercial Pilot Practical Test Standards for Rotorcraft Category Gyroplane Rating, November 2023.
Commercial Pilot Certificate; Powered-Lift Category	FAA–S–ACS–2, Commercial Pilot for Powered-Lift Category Airman Certification Standards, November 2023.
Commercial Pilot Certificate; Glider Category	FAA–S–8081–23B, Commercial Pilot Practical Test Standards for Glider Category, November 2023.
Commercial Pilot Certificate; Lighter-Than-Air Category—Airship Rating, Lighter-Than-Air Category—Balloon Rating.	FAA–S–8081–18A, Commercial Pilot Practical Test Standards for Lighter-Than-Air Category, November 2023.
Private Pilot Certificate; Airplane Category—Single-Engine Land Rating, Airplane Category—Single-Engine Sea Rating, Airplane Category—Multiengine Land Rating, Airplane Category—Multiengine Sea Rating.	FAA–S–ACS–6C, Private Pilot for Airplane Category Airman Certification Standards, November 2023.
Private Pilot Certificate; Rotorcraft Category—Helicopter Rating	FAA–S–ACS–15, Private Pilot for Rotorcraft Category Helicopter Rating Airman Certification Standards, November 2023.
Private Pilot Certificate; Rotorcraft Category—Gyroplane Rating	FAA–S–8081–15B, Private Pilot Practical Test Standards for Rotorcraft Category Gyroplane Rating, November 2023.
Private Pilot Certificate; Powered-Lift Category	FAA–S–ACS–13, Private Pilot for Powered-Lift Category Airman Certification Standards, November 2023.
Private Pilot Certificate; Glider Category	FAA–S–8081–22A, Private Pilot Practical Test Standards for Glider Category, November 2023.
Private Pilot Certificate; Lighter-Than-Air Category—Airship Rating, Lighter-Than-Air Category—Balloon Rating.	FAA–S–8081–17A, Private Pilot Practical Test Standards for Lighter-Than-Air Category, November 2023.
Private Pilot Certificate; Powered Parachute Category—Land Rating, Powered Parachute Category—Sea Rating, Weight-Shift-Control Aircraft Category—Land Rating, Weight-Shift-Control Aircraft Category—Sea Rating.	FAA–S–8081–32A, Private Pilot Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Category, November 2023.
Recreational Pilot Certificate; Airplane Category—Single-Engine Land Rating, Airplane Category—Single-Engine Sea Rating, Rotorcraft Category—Helicopter Rating, Rotorcraft Category—Gyroplane Rating.	FAA–S–8081–3B, Recreational Pilot Practical Test Standards for Airplane Category and Rotorcraft Category, November 2023.
Sport Pilot Certificate; Airplane Category—Single-Engine Land Privileges, Airplane Category—Single-Engine Sea Privileges, Rotorcraft Category—Gyroplane Privileges, Glider Category.	FAA–S–8081–29A, Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Airplane Category, Rotorcraft Category, and Glider Category, November 2023.

If you are seeking this certificate, rating, and/or privilege . . .	Then this ACS/PTS (incorporated by reference, see § 61.14) is applicable:
Flight Instructor Certificate with a Sport Pilot Rating; Airplane Category—Single-Engine Privileges, Rotorcraft Category—Gyroplane Privileges, Glider Category.	
Sport Pilot Certificate; Lighter-Than-Air Category—Airship Privileges, Lighter-Than-Air Category—Balloon Privileges.	FAA–S–8081–30A, Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Lighter-Than-Air Category, November 2023.
Flight Instructor Certificate with a Sport Pilot Rating; Lighter-Than-Air Category—Airship Privileges, Lighter-Than-Air Category—Balloon Privileges.	
Sport Pilot Certificate; Powered Parachute Category—Land Privileges, Powered Parachute Category—Sea Privileges, Weight-Shift-Control Aircraft Category—Land Privileges, Weight-Shift-Control Aircraft Category—Sea Privileges.	FAA–S–8081–31A, Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Category, November 2023.
Flight Instructor Certificate with a Sport Pilot Rating; Powered Parachute Category Privileges, Weight-Shift-Control Aircraft Category Privileges.	
Instrument Rating—Airplane Instrument Proficiency Check—Airplane ...	FAA–S–ACS–8C, Instrument Rating—Airplane Airman Certification Standards, November 2023.
Instrument Rating—Helicopter Instrument Proficiency Check—Helicopter.	FAA–S–ACS–14, Instrument Rating—Helicopter Airman Certification Standards, November 2023.
Instrument Rating—Powered-Lift Instrument Proficiency Check—Powered-Lift.	FAA–S–ACS–3, Instrument Rating—Powered-Lift Airman Certification Standards, November 2023.
Flight Instructor Certificate; Airplane Category—Single Engine Rating Airplane Category—Multiengine Rating.	FAA–S–ACS–25, Flight Instructor for Airplane Category Airman Certification Standards, November 2023.
Flight Instructor Certificate; Rotorcraft Category—Helicopter Rating	FAA–S–ACS–29, Flight Instructor for Rotorcraft Category Helicopter Rating Airman Certification Standards, November 2023.
Flight Instructor Certificate; Rotorcraft Category—Gyroplane Rating	FAA–S–8081–7C, Flight Instructor Practical Test Standards for Rotorcraft Category Gyroplane Rating, November 2023.
Flight Instructor Certificate; Powered-lift Category	FAA–S–ACS–27, Flight Instructor for Powered-Lift Category Airman Certification Standards, November 2023.
Flight Instructor Certificate; Glider Category	FAA–S–8081–8C, Flight Instructor Practical Test Standards for Glider Category, November 2023.
Flight Instructor Certificate; Instrument—Airplane Rating, Instrument—Helicopter Rating.	FAA–S–8081–9E, Flight Instructor Instrument Practical Test Standards for Airplane Rating and Helicopter Rating, November 2023.
Flight Instructor Certificate; Instrument—Powered-Lift Rating	FAA–S–ACS–28, Flight Instructor—Instrument Rating Powered-Lift Airman Certification Standards, November 2023.
Aircraft Type Rating—Airplane	FAA–S–ACS–11A, Airline Transport Pilot and Type Rating for Airplane Category Airman Certification Standards, November 2023.
Aircraft Type Rating—Helicopter	FAA–S–8081–20A, Airline Transport Pilot and Aircraft Type Rating Practical Test Standards for Rotorcraft Category Helicopter Rating, November 2023.
Aircraft Type Rating—Powered-Lift	FAA–S–ACS–17, Airline Transport Pilot and Type Rating for Powered-Lift Category Airman Certification Standards, November 2023.
Pilot-in-Command Proficiency Check—Airplane	FAA–S–ACS–11A, Airline Transport Pilot and Type Rating for Airplane Category Airman Certification Standards; November 2023.
Pilot-in-Command Proficiency Check—Helicopter	FAA–S–8081–20A, Airline Transport Pilot and Aircraft Type Rating Practical Test Standards for Rotorcraft Category Helicopter Rating, November 2023.
Pilot-in-Command Proficiency Check—Powered-Lift	FAA–S–ACS–17, Airline Transport Pilot and Type Rating for Powered-Lift Category Airman Certification Standards, November 2023.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 10. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 11. Revise § 63.39 to read as follows:

§ 63.39 Skill requirements.

(a) An applicant for a flight engineer certificate with a class rating must pass a practical test in the class of airplane for which a rating is sought. To pass the practical test for a flight engineer certificate, the applicant must satisfactorily demonstrate the objectives in the areas of operation specified in the Flight Engineer Practical Test Standards for Reciprocating Engine, Turbopropeller, and Turbojet Powered Aircraft (incorporated by reference, see paragraph (c) of this section). The test may only be given in an airplane specified in § 63.37(a).

(b) The applicant must—

(1) Show that the applicant can satisfactorily perform preflight inspection, servicing, starting, pretakeoff, and postlanding procedures;

(2) In flight, show that the applicant can satisfactorily perform the normal duties and procedures relating to the airplane, airplane engines, propellers (if appropriate), systems, and appliances; and

(3) In flight, in an airplane simulator, or in an approved flight engineer training device, show that the applicant can satisfactorily perform emergency duties and procedures and recognize and take appropriate action for malfunctions of the airplane, engines, propellers (if appropriate), systems and appliances.

(c) FAA–S–8081–21A, Flight Engineer Practical Test Standards for Reciprocating Engine, Turbopropeller, and Turbojet Powered Aircraft, November 2023, is incorporated by reference into this section with the approval of the Director of the Federal

Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Aviation Administration (FAA) and the National Archives and Records Administration (NARA). Contact FAA, Training and Certification Group, 202–267–1100, *ACSPTSinquiries@faa.gov, www.faa.gov/training_testing.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from FAA, 800 Independence Avenue SW, Washington, DC 20591, 866–835–5322, *www.faa.gov/training_testing.*

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 12. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 13. Amend § 65.23 by revising the introductory text and paragraph (a) to read as follows:

§ 65.23 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Federal Aviation Administration (FAA) and at the National Archives and Records Administration (NARA). Contact FAA, Certification and Training Group, 202–267–1100, *ACSPTSinquiries@faa.gov.* 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.* The material may be obtained from the source in the following paragraph of this section.

(a) Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, 866–835–5322, *www.faa.gov/training_testing.*

(1) FAA–S–8081–10E, Aircraft Dispatcher Practical Test Standards, November 2023; IBR approved for § 65.59.

(2) FAA–S–8081–25C, Parachute Rigger Practical Test Standards, November 2023; IBR approved for §§ 65.115, 65.119, and 65.123.

(3) FAA–S–ACS–1, Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards, November 1, 2021; IBR approved for §§ 65.75 and 65.79.

* * * * *

■ 14. Revise § 65.59 to read as follows:

§ 65.59 Skill requirements.

An applicant for an aircraft dispatcher certificate must pass a practical test given by the Administrator, with respect to any one type of large aircraft used in air carrier operations. To pass the practical test for an aircraft dispatcher certificate, the applicant must satisfactorily demonstrate the objectives in the areas of operation specified in the Aircraft Dispatcher Practical Test Standards (incorporated by reference, see § 65.23).

■ 15. Amend § 65.115 by revising paragraphs (a) and (c) to read as follows:

§ 65.115 Senior parachute rigger certificate: Experience, knowledge, and skill requirements.

* * * * *

(a) Present evidence satisfactory to the Administrator that the applicant has packed at least 20 parachutes of each type for which the applicant seeks a rating, in accordance with the manufacturer's instructions and under the supervision of a certificated parachute rigger holding a rating for that type or a person holding an appropriate military rating;

* * * * *

(c) Pass an oral and practical test showing the applicant's ability to pack and maintain at least one type of parachute in common use, appropriate to the type rating the applicant seeks. To pass the oral and practical test for a senior parachute rigger certificate, the applicant must satisfactorily demonstrate the objectives in the areas of operation applicable to a senior parachute rigger specified in the Parachute Rigger Practical Test Standards (incorporated by reference, see § 65.23), appropriate to the type rating sought.

■ 16. Amend § 65.119 by revising paragraphs (a) and (c) to read as follows:

§ 65.119 Master parachute rigger certificate: Experience, knowledge, and skill requirements.

* * * * *

(a) Present evidence satisfactory to the Administrator that the applicant has had at least 3 years of experience as a parachute rigger and has satisfactorily packed at least 100 parachutes of each of two types in common use, in accordance with the manufacturer's instructions—

* * * * *

(c) Pass an oral and practical test showing the applicant's ability to pack and maintain two types of parachutes in common use, appropriate to the type ratings the applicant seeks. To pass the oral and practical test for a master parachute rigger certificate, the applicant must satisfactorily demonstrate the objectives in the areas of operation applicable to a master parachute rigger specified in the Parachute Rigger Practical Test Standards (incorporated by reference, see § 65.23), as appropriate to the type rating sought.

■ 17. Revise § 65.123 to read as follows:

§ 65.123 Additional type ratings: Requirements.

A certificated parachute rigger who applies for an additional type rating must—

(a) Present evidence satisfactory to the Administrator that the applicant has packed at least 20 parachutes of the type for which the applicant seeks a rating, in accordance with the manufacturer's instructions and under the supervision of a certificated parachute rigger holding a rating for that type or a person holding an appropriate military rating; and

(b) Pass a practical test, to the satisfaction of the Administrator, showing the applicant's ability to pack and maintain the type of parachute, appropriate to the type rating sought. To pass the practical test for an additional type rating, the applicant must satisfactorily demonstrate the objectives in the area of operation specified in the Parachute Rigger Practical Test Standards (incorporated by reference, see § 65.23), applicable to the type rating sought.

Issued under authority provided by 49 U.S.C. 106(f), 40113, 44701, 44702, and 44703 in Washington, DC.

Michael Gordon Whitaker,

Administrator.

[FR Doc. 2024–06644 Filed 3–29–24; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL REGISTER

Vol. 89 Monday,
No. 63 April 1, 2024

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revision to the Section 4(d) Rule for the African Elephant; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–IA–2021–0099; FXIA16710900000–234–FF09A30000]

RIN 1018–BG66

Endangered and Threatened Wildlife and Plants; Revision to the Section 4(d) Rule for the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising the rule for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the Endangered Species Act of 1973, as amended (ESA). The purposes are threefold: To increase protection for African elephants in light of the recent rise in international trade of live African elephants by establishing ESA enhancement permit requirements for international trade in live elephants and specific enhancement requirements for the import of wild-sourced elephants, as well as requirements to ensure that all proposed recipients of live African elephants are suitably equipped to house and care for them; to clarify the existing enhancement requirement during our evaluation of an application for a permit to import African elephant sport-hunted trophies; and to incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies. Amendments to the section 4(d) regulations in 2016 prohibited the import and export of African elephant ivory with limited exceptions. This final rule does not affect the regulations pertaining to African elephant ivory.

DATES: This rule is effective May 1, 2024.

Information Collection Requirements: If you wish to comment on the information collection requirements in this rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after the date of publication of this rule in the **Federal Register**. Therefore, comments should be submitted to OMB by May 1, 2024.

ADDRESSES: This rule and supporting documentation, including the environmental assessment and economic analysis, are available at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2021–0099.

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted within 30 days of publication of this document to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference OMB Control Number 1018–0186 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Mary Cogliano, Manager, Branch of Permits, Division of Management Authority; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041 (telephone (703) 358–2104). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need To Publish a Final Rule. When a species is listed as threatened, section 4(d) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), gives discretion to the Secretary of the Interior (Secretary) to issue regulations that the Secretary deems necessary and advisable to provide for the conservation of such species. Considering the rise in international trade of live elephants, particularly of wild-sourced elephants, and recent CITES developments concerning regulation of trade in live elephants, as well as a need to clarify our enhancement standards and improve the permitting process for import of sport-hunted elephant trophies, we reevaluated the provisions of the regulations that were issued under section 4(d) of the ESA for the African elephant. We find it is appropriate for the United States to adopt requirements under the ESA to ensure that activities with live African elephants under U.S. jurisdiction contribute to enhancing the conservation of the species and that live African elephants are well cared for, so that any domestic demand for live African elephants enhances the conservation of the species and does not contribute to the decline of the species in the wild. In addition, clarifying the enhancement requirement for the import of African elephant sport-hunted trophies and receiving information from the range countries will enable us to ensure that authorized imports contribute to enhancing the conservation of the species and do not contribute to the decline of the species. Clarifying the enhancement standards in the decision-making process for the import of African elephant sport-hunted trophies will increase transparency with stakeholders. To support U.S. African elephant conservation efforts, we will allow certain types of imports only from countries that have achieved a Category One designation under the CITES National Legislation Project, which is accomplished by meeting the basic requirements to implement CITES through the Party's adoption of national laws to implement the treaty. On November 17, 2022, we published a proposed rule to revise the current section 4(d) regulations (87 FR 68975) and opened the public comment period for 60 days, until January 17, 2023. On January 5, 2023, we held a virtual public hearing where we explained the proposed changes and sought public comment. On January 17, 2023, we extended the public comment period for an additional 60 days, to March 20, 2023 (88 FR 2597).

We are revising the section 4(d) rule (in part 17 of title 50 of the Code of Federal Regulations at 50 CFR 17.40(e)) by adopting measures that are necessary and advisable for the current conservation needs of the species, based on our evaluation of the current threats to the African elephant. This final section 4(d) rule removes from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17. The final rule also establishes the standards used to evaluate ''enhancement'' under the ESA for the import of wild-sourced live African elephants under a new 50 CFR 17.40(e)(10). This provision establishes an annual certification requirement for range countries that allow for export of live African elephants destined for the

United States to provide the Service with information about the management and status of African elephants in their country.

This final rule also clarifies our evaluation of the existing enhancement requirement regarding applications for the import of sport-hunted trophies by adding a new provision to 50 CFR 17.40(e)(6). This provision establishes an annual certification requirement for range countries that allow for export of sport-hunted trophies destined for the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This provision does not change the enhancement requirement for the import of sport-hunted trophies under the previous section 4(d) rule but clarifies how that requirement can be met.

This final rule also includes incorporating the CITES National Legislation Project category designations (see 50 CFR 23.7 and *https://www.cites.org*) into the acceptance of imports under 50 CFR 17.40(e)(2), (e)(6), and (e)(10) under a new 50 CFR 17.40(e)(11).

Need for Regulatory Action

We have reevaluated the provisions of the current section 4(d) rule and considered other administrative actions in light of the rise in international trade of live African elephants. In addition, we have received a rulemaking petition under the Administrative Procedure Act (5 U.S.C. 553(e)) specifically relating to the import of African elephant sport-hunted trophies. The petition is a request to initiate an expedited rulemaking to reinstate negative enhancement findings for African elephant sport-hunted trophies taken in Zimbabwe (Friends of Animals (FOA), received May 17, 2021).

We are responding to the petition and information provided with it through the revisions in this document to the section 4(d) rule for the African elephant.

In the petition described above, FOA requests the Service to: (1) repeal or amend the memorandum dated March 1, 2018, in which the Service withdrew certain findings for ESA-listed species taken as sport-hunted trophies; (2) reinstate the Enhancement Finding for African elephants Taken as Sport-hunted Trophies in Zimbabwe On or After January 1, 2015 (Mar. 26, 2015); and (3) enact an immediate moratorium on the importation of African elephant sport-hunted trophies from Zimbabwe. Additional information can be found below in *Basis for Regulatory Changes;* however, in summary, the Service previously issued enhancement findings for the import of African elephant sport-hunted trophies on a country-by-country basis. In response to a D.C. Circuit Court opinion, *Safari Club Int'l* v. *Zinke,* 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe and now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service's withdrawal of the countrywide findings and implementation of the application-by-application approach in *Friends of Animals* v. *Bernhardt,* 961 F.3d 1197 (D.C. Cir. 2020).

In fall 2022, right before publication of the African elephant section 4(d) proposed rule, the Service received a petition for rulemaking from Conservation Force (CF) to immediately suspend, then to revise or repeal, the limit of two African elephant trophy import permits per calendar year in the African elephant section 4(d) regulations governing import of sport-hunted African elephant trophies. Specifically, the petitioner requests that the Service revise the African elephant section 4(d) rule to allow four trophies per calendar year to cover 2 successive years of double hunts. They request the two-per-year rule be suspended until 2 or more years after the permitting backlog is addressed and recommend a Director's Order to suspend the two-per-year rule for an immediate effective date. The same request made in the petition was also submitted as part of the public-comment process on the African elephant section 4(d) proposed rule. The Service has addressed the petition in the relevant responses to public comments.

This final rule clarifies the enhancement criteria for our assessment of an application for the import of an African elephant sport-hunted trophy. Under this final rule, we will continue to evaluate applications on an application-by-application basis, but the clarified enhancement criteria include the requirement to obtain information on the status and management of the African elephant within the range country on an annual basis. The clarified enhancement criteria will assist the Service in ensuring that any import of an African elephant sport-hunted trophy contributes to enhancing the conservation of the species and that the import does not contribute to the decline of the species.

Ultimately, under this final section 4(d) rule, we have determined that there is a conservation need to (1) establish permitting requirements under the ESA for trade in live African elephants, enhancement standards under the ESA for the import of wild-sourced live African elephants, and requirements to ensure proposed recipients of live African elephants are suitably equipped to house and care for the elephants; (2) clarify the enhancement standards for the import of African elephant sport-hunted trophies; and (3) incorporate the CITES National Legislation Project designations into the requirements for certain imports.

Background

African elephants are a ''keystone species'' (a species on which other species in an ecosystem largely depend, such that if it were removed the ecosystem would change drastically) and have a unique role in the ecosystem. The species inhabits a wide variety of habitat types, such as savannahs, forests, deserts, and grasslands, and can migrate long distances, depending upon resource availability. African elephants modify habitat through numerous means, such as through bulk processing of plant materials, preventing the encroachment of woodlands onto grasslands, dispersing seeds, and maintaining waterways, among others. As a result of this habitat modification, the species has the potential to alter fire regimes, influence the spatial distribution of other species, and change species richness. Because of the numerous and often complex relationships between African elephants and (1) other African elephants, (2) other species on the landscape, and (3) their environment, the removal of African elephants from the wild has the potential to have large-scale ramifications on the composition and, in turn, health of the ecosystem. According to the International Union for Conservation of Nature (IUCN), the principal threat to African elephants has been poaching for ivory, but development for agriculture, coupled with associated human-elephant conflict as suitable elephant habitat is gradually reduced, are increasing as threats.

The Service has a responsibility to conserve both domestic and foreign species, and the ESA makes no distinction between foreign species and domestic species in listing species as threatened or endangered. The protections of the ESA, including sections 9 and 4(d), generally apply to

both listed foreign species and domestic species, and section 8 of the ESA provides authorities for international cooperation on foreign species. However, some significant differences in the Service's authorities result in differences in our ability to affect conservation for foreign and domestic species under the ESA. The major differences are that the Service has no regulatory jurisdiction over take of a listed species in a foreign country, or of trade in listed species outside the United States by persons not subject to the jurisdiction of the United States (50 CFR 17.21). The Service also does not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States (50 CFR 424.12(g)). The protections of the ESA through listing are likely to have their greatest conservation effect for foreign species with regard to regulating trade to, from, through, or within the United States, and other activities with foreign species in the United States.

Accordingly, we find it is necessary and advisable to adopt requirements under the ESA to ensure that activities with live African elephants under U.S. jurisdiction contribute to enhancing the conservation of the species, and that live African elephants are well cared for, so that any demand for live African elephants in the United States enhances the conservation of the species and does not contribute to the decline of the species in the wild. We also evaluated our current process for making ESA enhancement findings related to permit applications requesting the import of sport-hunted trophies of African elephants. We considered how our permitting process and resulting decisions could be more transparent so that applicants, the public, and stakeholders understand the requirements under the ESA. To clarify and improve this process, we are adding new provisions to 50 CFR 17.40(e)(6) and 50 CFR 17.40(e)(10) that establish an annual certification requirement for African elephant range countries that export sport-hunted African elephant trophies or live, wild-sourced African elephants to the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This requirement and the information from the range countries will be a part of our decision-making on applications to permit the import of African elephant sport-hunted trophies or live, wild-sourced African elephants. We note that the certification from the range country to the Service will be able to reflect if there are no or minimal changes from one year to the next. If our evaluation determines that the requirements are no longer being met, we will work with the range country to communicate and address any concerns. The annual certification requirement will increase the efficiency of our permitting process and enable us to ensure that authorized imports contribute to enhancing the conservation of the species and that the imports do not contribute to the decline of the species.

Clarifying the enhancement standards and improving this process for the import of African elephant sport-hunted trophies or live, wild-sourced African elephants also increases transparency with stakeholders and will lead to more efficient evaluations of applications. This change to the section 4(d) rule does not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. The decisions about whether to hunt African elephants will continue to be made by hunters and the countries that allow hunting, and imports will be allowed only in circumstances where the activities are well-managed. The import of any associated sport-hunted trophy into the United States will continue to be regulated and to require an enhancement finding and threatened species import permit. The adopted measures are anticipated to support development and implementation of effective management measures in foreign countries that enhance African elephant conservation.

Further, we find it necessary to ensure that we allow African elephant imports only from countries that have met the basic requirement to implement CITES under their national laws. Thus, this final rule incorporates a requirement that African elephant imports, including live elephants, sport-hunted trophies, and parts or products other than ivory and sport-hunted trophies, be considered only when the country of origin and export or re-export has achieved a Category One designation under the CITES National Legislation Project with limited exceptions. Making this regulatory change further ensures that authorized imports of African elephants are not detrimental to the survival of the species.

Regulatory Background

In the United States, the African elephant is protected under the ESA, the African Elephant Conservation Act (AfECA) (16 U.S.C. 4201 *et seq.*), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) (27 U.S.T. 1087), as implemented in the United States through the ESA.

Endangered Species Act. Under the ESA, species may be listed either as ''endangered'' or ''threatened.'' When a species is listed as endangered under the ESA, certain actions are prohibited under section 9 (16 U.S.C. 1538), as specified at 50 CFR 17.21. With respect to endangered species of fish or wildlife, these include prohibitions on import; export; take within the United States, within the territorial seas of the United States, or upon the high seas; possession and other acts with unlawfully taken specimens; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce of the species and their parts and products. It is also unlawful to attempt to commit, to solicit another to commit, or to cause to be committed any such conduct. However, under certain circumstances, permits may be issued that authorize exceptions to prohibited activities.

In contrast, prohibitions for threatened species are not directly specified by the ESA, and instead are governed by section 4(d). Section 4(d) of the ESA contains two sentences. The first sentence states that the Secretary shall issue such regulations as he or she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). ''Conservation'' is defined in the ESA to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary (16 U.S.C. 1532(3)). Additionally, the second sentence of section 4(d) of the ESA states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, with respect to endangered species. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are

appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all the threats that a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the ESA was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The African elephant was listed as threatened under the ESA, effective June 11, 1978 (43 FR 20499, May 12, 1978). A review of the status of the species at that time showed that the African elephant was declining in many parts of its range and that habitat loss, illegal killing of elephants for their ivory, and inadequacy of existing regulatory mechanisms were factors contributing to the decline. At the same time the African elephant was designated as a threatened species, the Service promulgated a section 4(d) rule to regulate import and certain interstate commerce of the species in the United States (43 FR 20499, May 12, 1978). The 1978 section 4(d) rule for the African elephant stated that the prohibitions at 50 CFR 17.31 applied to any African elephant, alive or dead, and to any part, product, or offspring thereof, with certain exceptions.

Specifically, under the 1978 rule, the prohibition at 50 CFR 17.31 against importation did not apply to African elephant specimens that had originated in the wild in a country that was a Party to CITES if they had been exported or re-exported in accordance with Article IV of the Convention and had remained in customs control in any country not party to the Convention that they transited enroute to the United States (at that time, the only African elephant range countries that were Parties to CITES were Botswana, Ghana, Niger, Nigeria, Senegal, South Africa, and Zaire [now the Democratic Republic of the Congo].) The 1978 rule allowed for the Service to issue a special purpose permit in accordance with the provisions of 50 CFR 17.32 to authorize any activity otherwise prohibited with regard to the African elephant, upon receipt of proof that the specimens were already in the United States on June 11, 1978, or that the specimens were imported under the exception described above.

The section 4(d) rule has been amended four times, in part in response to the population decline of African elephants and the increase in illegal trade in elephant ivory, and to more closely align U.S. requirements with actions taken by the CITES Parties. On September 20, 1982, the Service amended the section 4(d) rule for the African elephant (47 FR 31384, July 20, 1982) to ease restrictions on domestic activities and to align its requirements more closely with provisions in CITES Resolution Conf. 3.12, *Trade in African elephant ivory,* adopted by the CITES Parties at the third meeting of the Conference of the Parties (CoP3, 1981). The 1982 rule applied only to import and export of ivory (and not other elephant specimens) and eliminated the prohibitions under the ESA against taking, possession of unlawfully taken specimens, and certain activities for the purpose of engaging in interstate and foreign commerce, including the sale and offer for sale in interstate commerce of African elephant specimens. At that time, the Service concluded that the restrictions on interstate commerce contained in the 1978 rule were unnecessary and that the most effective means of utilizing limited resources to control ivory trade was through enforcement efforts focused on imports.

The ESA section 4(d) rule for the African elephant was further revised on September 9, 1992 (57 FR 35473, August 10, 1992), following establishment of the 1989 moratorium under the African Elephant Conservation Act on the import of African elephant ivory into the United States, and again on June 26, 2014 (79 FR 30400, May 27, 2014), associated with an update of U.S. CITES implementing regulations. In the 2014 revision of the section 4(d) rule, we removed the CITES marking requirements for African elephant sport-hunted trophies. At the same time, these marking requirements were updated and incorporated into our CITES regulations at 50 CFR 23.74. The purpose of this regulatory change was to make clear what is required under CITES (at 50 CFR part 23) for trade in sport-hunted trophies and what is required under the ESA (at 50 CFR part 17).

In response to the alarming rise in poaching to fuel the growing illegal trade in ivory, the Service again revised the section 4(d) rule on July 6, 2016 (81 FR 36388, June 6, 2016). The revised rule prohibited the import and export of African elephant ivory with limited exceptions for musical instruments, items that are part of a traveling exhibition, and items that are part of a household move or inheritance when specific criteria are met and ivory for law enforcement or genuine scientific purposes. The revised rule amended the exception for import of sport-hunted trophies with an enhancement finding by adding a requirement that a threatened species import permit be issued under 50 CFR 17.32. The revised rule also limited the number of sport-hunted African elephant trophies imported into the United States to two per hunter per year. Interstate and foreign commerce in African elephant ivory was prohibited except for items that qualify as ESA antiques and certain manufactured or handcrafted items that contain a small (*de minimis*) amount of ivory and meet specific criteria. The revised rule also prohibited take of live African elephants in the United States to help ensure that elephants held in captivity receive an appropriate standard of care. For example, live elephants in the United States cannot be used for sport hunting. Killing or otherwise hunting an elephant in the United States would be prohibited take. The revised rule did not amend exceptions allowing for trade in live African elephants and African elephant parts and products other than ivory and sport-hunted trophies. Specifically, under the current section 4(d) rule, live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under 50 CFR 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met. The revised rule made it unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy.

In summary, under the provisions of the section 4(d) rule published in 2016, at 50 CFR 17.40(e), all of the prohibitions and exceptions in 50 CFR

17.31 (incorporating 50 CFR 17.21) and 17.32 apply to the African elephant, with certain exceptions for qualifying activities provided in 50 CFR 17.40(e)(2) through (e)(9). Other than activities that qualify for an exception, the prohibitions make it illegal for any person subject to the jurisdiction of the United States to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any African elephant. In addition, it is unlawful to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) African elephants within the United States or on the high seas. It is also illegal to possess, sell, deliver, carry, transport, or ship, by any means whatsoever any African elephant that has been taken illegally.

We note that the Service has been petitioned to reclassify the African elephant as endangered and to recognize two species of African elephants and classify them both as endangered. Review of those petitions, through a process separate from this rulemaking, is ongoing.

African Elephant Conservation Act. The AfECA was enacted in 1988 to ''perpetuate healthy populations of African elephants'' by regulating the import and export of certain African elephant ivory to and from the United States. Building from and supporting existing programs under CITES, the AfECA called on the Service to establish moratoria on the import of raw and worked ivory from both African elephant range countries and intermediary countries (those that export ivory that does not originate in that country) that failed to meet certain statutory criteria. The statute also states that it does not provide authority for the Service to establish a moratorium that prohibits the import of sport-hunted trophies that meet certain standards. This limitation is specific to the AfECA and does not limit agency authority under the ESA.

In addition to authorizing establishment of the moratoria and prohibiting any import in violation of the terms of any moratorium, the AfECA prohibits: The import of raw African elephant ivory from any country that is not a range country; the import of raw or worked ivory exported from a range country in violation of that country's laws or applicable CITES programs; the import of worked ivory, other than certain personal effects, unless the exporting country has determined that the ivory was legally acquired; and the export of all raw (but not worked) African elephant ivory. While the AfECA comprehensively addresses the import of ivory into the United States, it does not address other uses of ivory or African elephant specimens other than ivory and sport-hunted trophies. The AfECA does not regulate the use of ivory within the United States and, other than the prohibition on the export of raw ivory, does not regulate export of ivory from the United States. The AfECA also does not regulate the import or export of live African elephants.

Following enactment of the AfECA (in October 1988), the Service established, on December 27, 1988, a moratorium on the import into the United States of African elephant ivory from countries that were not parties to CITES (53 FR 52242). On February 24, 1989, the Service established a second moratorium on all ivory imports into the United States from Somalia (54 FR 8008). On June 9, 1989, the Service put in place a moratorium that banned the import of ivory other than sport-hunted trophies from both range and intermediary countries (54 FR 24758).

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES entered into force in 1975 and currently has 184 Parties (183 countries and 1 regional economic integration organization that have ratified the Convention), including the United States. The aim of CITES is to regulate international trade in listed animal and plant species, including their parts and products, to ensure the trade is legal and does not threaten the survival of species. CITES regulates both commercial and noncommercial international trade through a system of permits and certificates that must be presented when leaving and entering a country with CITES specimens. Species are listed in one of three appendices, which provide different levels of protection. In some circumstances, different populations of a species are listed at different levels. Appendix I includes species that are threatened with extinction and are or may be affected by trade. The Convention states that Appendix-I species must be subject to ''particularly strict regulation'' and trade in specimens of these species should be authorized only ''in exceptional circumstances.'' Appendix II includes species that are not necessarily threatened with extinction now but may become so if international trade is not regulated. Appendix III includes species that a range country has identified as being subject to regulation within its jurisdiction and as needing cooperation of other Parties in the control of international trade. Import and export of CITES species is prohibited unless accompanied by any required CITES documents. Documentation requirements vary depending on the CITES Appendix in which the species or population is included and other factors. CITES documents cannot be issued until specific biological and legal findings have been made. U.S. CITES implementing regulations are found in 50 CFR part 23. The CITES Appendices are found on the CITES website (see *www.cites.org; https://cites.org/eng/app/appendices.php;* 50 CFR 23.7 and 23.91).

Ghana first listed the African elephant in CITES Appendix III on February 26, 1976. Later that year, the CITES Parties agreed to add African elephants to Appendix II, effective February 4, 1977. In October 1989, all populations of African elephants were transferred from CITES Appendix II to Appendix I (effective in January 1990), which ended much of the legal commercial trade in African elephant ivory.

In 1997, based on proposals submitted by Botswana, Namibia, and Zimbabwe and the report of a panel of experts (which concluded, among other things, that populations in these countries were stable or increasing and that poaching pressure was low), the CITES Parties agreed to transfer the African elephant populations in these three countries to CITES Appendix II. The Appendix-II listing included an annotation that allowed noncommercial export of hunting trophies, export of live animals to appropriate and acceptable destinations, export of hides from Zimbabwe, and noncommercial export of leather goods and some ivory carvings from Zimbabwe. It also allowed for a one-time export of raw ivory to Japan (which took place in 1999) once certain conditions had been met. All other African elephant specimens from these three countries were deemed to be specimens of a species listed in Appendix I and regulated accordingly.

The African elephant population of South Africa was transferred from CITES Appendix I to Appendix II in 2000, with an annotation that allowed trade in hunting trophies for noncommercial purposes, trade in live animals for reintroduction purposes, and trade in hides and leather goods. At that time, the panel of experts reviewing South Africa's proposal concluded, among other things, that South Africa's elephant population was increasing, that there were no apparent threats to the status of the population, and that the country's anti-poaching measures were ''extremely effective.'' Since then, the

CITES Parties have revised the Appendix II listing annotation.

The current annotation covers the Appendix-II populations of Botswana, Namibia, South Africa, and Zimbabwe for the exclusive purpose of allowing trade in:

- sport-hunted trophies for noncommercial purposes;
- live animals to appropriate and acceptable destinations, as defined in Resolution Conf. 11.20 (Rev. CoP18), for Botswana and Zimbabwe and for in situ conservation programs for Namibia and South Africa;
- hides;
- hair;
- trade in leather goods for commercial or noncommercial purposes for Botswana, Namibia, and South Africa and for noncommercial purposes for Zimbabwe;
- certain ivory carvings from Namibia and Zimbabwe for noncommercial purposes; and
- a one-time export of specific quantities of raw ivory, once certain conditions had been met (this export, to China and Japan, took place in 2009).

These specimens can be traded under CITES as Appendix-II specimens. As in previous versions of the annotation, all other African elephant specimens from these four populations are deemed to be specimens of species included in Appendix I, and the trade in them is regulated accordingly.

With regard to live African elephants, as noted above, African elephants are included in CITES Appendix I, except for the annotated African elephant populations of Botswana, Namibia, South Africa, and Zimbabwe that are included in CITES Appendix II. Live African elephants exported from Botswana and Zimbabwe under the annotation are for trade to ''appropriate and acceptable destinations'' as defined in Resolution Conf. 11.20 (Rev. CoP18) on *Definition of the term 'appropriate and acceptable destinations,'* while live African elephants exported from Namibia and South Africa under the annotation are for ''in situ conservation programs.'' Under the annotation, all other live African elephant specimens from these four populations shall be deemed to be specimens of species included in Appendix I, and the trade in them shall be regulated accordingly. The annotation reads, in relevant part, as follows:

Populations of Botswana, Namibia, South Africa and Zimbabwe (listed in Appendix II):

For the exclusive purpose of allowing:

* * * * *

(b) trade in live animals to appropriate and acceptable destinations, as defined in Resolution Conf. 11.20 (Rev. CoP18), for Botswana and Zimbabwe and for *in situ* conservation programs for Namibia and South Africa;

* * * * *

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

Appendix-I specimens require a CITES permit from both the exporting and importing countries. In the United States, the Service, as the U.S. Management Authority, issues Appendix-I import permits if required CITES findings are made, including: That the import is not for primarily commercial purposes (made by the Management Authority); that the import is for purposes that are not detrimental to the survival of the species (made by the Scientific Authority); and that the facility is suitably equipped to care for and house the specimens to be imported (made by the Scientific Authority). Requirements for an import permit are found at 50 CFR 23.35. With limited exceptions, an Appendix-I specimen may be used only for noncommercial purposes after import, 50 CFR 23.55. These same requirements apply to a live African elephant specimen from the Appendix-II populations if the trade does not meet the requirements of the annotation, because the specimen is treated as an Appendix-I specimen, and subject to Article III requirements.

Live elephants from Botswana and Zimbabwe traded in accordance with the annotation are traded as Appendix-II specimens under Article IV requirements and require a CITES export permit where the legal acquisition and non-detriment findings are made by the exporting country. The ''appropriate and acceptable destination'' finding is made by the importing country's Scientific Authority in consultation with the exporting country. For example, elephants from Botswana or Zimbabwe imported into the United States would require prior findings by the Service under the ''appropriate and acceptable destination'' annotation to be regulated pursuant to the requirements of Article IV as an Appendix-II specimen. Again, if the requirements of the annotation are not met, the specimen is treated as an Appendix-I specimen and subject to Article III requirements.

Live elephants from Namibia and South Africa traded in accordance with the annotation are traded as Appendix-II specimens under Article IV requirements and require a CITES export permit where the legal acquisition and non-detriment findings are made by the exporting country. Under the annotation, these live elephants may be traded only within the native range of the African elephant for ''in-situ conservation programs.'' Again, if the requirements of the annotation are not met, the specimen is traded as an Appendix-I specimen and subject to Article III requirements. For example, elephants from Namibia or South Africa imported into the United States are regulated pursuant to the requirements of Article III as an Appendix-I specimen. Accordingly, no import of an African elephant to the United States can occur without either a prior import permit issued by the Service in accordance with Article III, or in the case of elephants originating from Zimbabwe or Botswana, if the Service has made prior findings under the ''appropriate and acceptable destination'' annotation.

At CITES CoP18, in discussion of the definition of ''appropriate and acceptable destinations,'' the Parties adopted amendments to Resolution Conf. 11.20 (Rev. CoP18) that would not allow trade in live African elephants from Botswana and Zimbabwe outside their native range under the annotation, except in an exceptional circumstance (defined in the resolution). These amendments are the subject of ongoing discussion in CITES. At CoP19, the Conference of the Parties also adopted Decision 19.168, which temporarily extends the same process to all exports of wild-sourced live African elephants outside the species' natural and historical range in Africa. Additionally, guidance on determining whether a proposed recipient of a living specimen of African elephant is suitably equipped to house and care for it was adopted at CoP18 and CoP19, as described below.

CITES National Legislation Project. In accordance with CITES Resolution Conf. 8.4 (Rev. CoP15) on *National laws for the implementation of the Convention,* and with oversight from the CITES Standing Committee, the CITES Secretariat identifies Parties whose domestic measures do not provide them with the authority to:

(i) Designate at least one Management Authority and one Scientific Authority,

(ii) prohibit trade in specimens in violation of the Convention,

(iii) penalize such trade, or

(iv) confiscate specimens illegally traded or possessed.

All four requirements must be met by the national laws of a Party for the Party to meet the minimum requirements to implement CITES. It is an obligation of each Party under CITES to have national legislation in place that meets these requirements in order to engage in trade in compliance with CITES (CITES Article VIII(1), IX; see also Article II(4)).

For example, in the United States, the ESA meets these requirements. The Secretariat, under the CITES National Legislation Project and in consultation with the concerned Party, analyzes national legislation for the four aforementioned requirements and designates the legislation of each Party into one of three categories:

(1) Category One, defined as legislation that is believed generally to meet the requirements for implementation of CITES [all of provisions (i)–(iv) in the list above are met];

(2) Category Two, defined as legislation that is believed generally not to meet all of the requirements for the implementation of CITES [some of provisions (i)–(iv) in the list above are met]; and

(3) Category Three, defined as legislation that is believed generally not to meet the requirements for the implementation of CITES [none of provisions (i)–(iv) in the list above are met].

The Secretariat maintains a legislative status table, which is periodically revised with oversight by the Standing Committee, and includes the category in which each Party's legislation is placed and whether the Party has been identified by the Standing Committee as requiring attention as a priority. The CITES National Legislation Project designations are available with other official CITES documents on the CITES Secretariat website (see 50 CFR 23.7 and *https://cites.org/eng/legislation/parties*).

After the 77th Meeting of the Standing Committee (SC77) (Geneva, November 2023), range countries of the African elephant currently have national legislation classified as follows:

Category One: Angola, Cameroon, the Democratic Republic of the Congo, Ethiopia, Equatorial Guinea, Guinea-Bissau, Malawi, Namibia, Nigeria, Senegal, South Africa, United Republic of Tanzania, and Zimbabwe;

Category Two: Benin, Botswana, Burkina Faso, Chad, Republic of the Congo, Eritrea, Gabon, Guinea, Kenya, Mali, Mozambique, Sudan, Togo, and Zambia; and

Category Three: The Central African Republic, Côte d'Ivoire, Eswatini, Ghana, Liberia, Niger, Rwanda, Sierra Leone, Somalia, and Uganda.

The Standing Committee has identified the following Parties that are also range countries of the African elephant as requiring priority attention for review under the National Legislation Project: Botswana, Republic of the Congo, Guinea, Kenya, Liberia, Mozambique, Rwanda, Somalia, and Uganda. As noted above, these categories are periodically revised as Parties enact CITES-implementing legislation, and therefore each Party in Category Two or Three can and is expected to achieve Category One. For example, following the publication of our proposed rule, the Secretariat announced at SC77 that the United Republic of Tanzania had made necessary updates to its national legislation, and the Standing Committee commended the United Republic of Tanzania for the efforts leading to their legislation being placed in Category One. Additionally, the legislation of a Party currently placed in Category One may be subject to a revised legislative analysis at any time following relevant legislative developments, such as repealing of CITES-implementing legislation. The Secretariat reports on progress, and issues are reviewed at regular meetings of the Conference of the Parties and the Standing Committee.

Basis for Regulatory Changes

Exercising the Secretary's authority under section 4(d) of the ESA, we have developed a final rule that is designed to address the African elephant's conservation needs. We find that this rule satisfies the requirement in section 4(d) of the ESA to issue regulations deemed necessary and advisable to provide for the conservation of the African elephant.

The Service recognizes that some have suggested the possibility of promulgating a ban or moratorium on the import of live African elephants, elephant sport-hunted trophies, or parts and products other than ivory and sport-hunted trophies, with no permitting exceptions. These suggestions were also raised in comments submitted on the proposed rule. We have not pursued such an option, and we note that there has not previously been such a ban promulgated under the ESA for African elephants or for any other ESA-listed endangered or threatened species. For example, although section 9(a)(1)(A) of the ESA and the Service's regulations in 50 CFR 17.21 prohibit import or export of any endangered wildlife, section 10(a)(1)(A) of the ESA and the Service's regulations at 50 CFR 17.22 provide exceptions by permit when certain issuance criteria are met. We are unconvinced that a conservation case has been made for considering taking such an unprecedented step for a threatened species. As referenced above, for an endangered species, all imports and exports are prohibited, with the exception of those accompanied by section 10(a)(1)(A) permits issued for scientific purposes or to enhance the propagation or survival of the species.

In the proposed rule, we did not propose a ban on imports of threatened African elephants with no permitting exceptions. A ban could require institutions exhibiting African elephants to rely on captive-breeding programs to replenish their stock, which could affect opportunities for genetic material exchanges, regardless of whether the institution is suitably equipped to care for and house the elephant or whether the trade is detrimental to or enhances the survival of the species. In addition, since elephants may face human-elephant conflict, for example as a result of their impact on local agriculture, some amount of culling could continue to occur despite a ban, such that banning the import of sport hunted trophies could deprive range countries of revenue for conservation purposes without necessarily affecting the number of animals removed from herds. A proposed ban of this nature would have conflicted with efforts to encourage positive elephant conservation efforts by range countries that are engaged in this trade and ensure that it is well-managed.

Rather, we intend the amendments to the section 4(d) rule presented below to continue to encourage African countries and people living with elephants to enhance their survival, provide incentives to take meaningful actions to conserve the species, and invest much-needed revenue into elephant conservation. Our final rule also ensures that we do not allow imports in circumstances where elephants are not well-managed and that any live elephants in trade and their offspring are well taken care of throughout their lifetimes.

General Provisions

We revise the section 4(d) rule for the African elephant in 50 CFR 17.40(e) to:

- remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17;
- establish requirements for the import of live African elephants under a new proposed 50 CFR 17.40(e)(10)(i);
- establish the standards used to evaluate ''enhancement'' under the ESA for the import of wild-sourced live African elephants under a new 50 CFR 17.40(e)(10)(ii), including an annual certification requirement for range countries that allows for export of live African elephants destined for the United States;
- require ''suitably equipped to house and care for'' findings for permitted transfers after import and other

permitted transfers to ensure live elephants are going only to facilities that are suitably equipped to house and care for them;

- improve and clarify our evaluation of the existing enhancement requirement during our evaluation of an application for the import of sport-hunted trophies by adding a new provision to 50 CFR 17.40(e)(6) that establishes an annual certification requirement for range countries that export sport-hunted trophies to the United States to provide the Service with information about the management and status of African elephants and the hunting programs in these countries; and
- incorporate the CITES National Legislation Project category designations into the acceptance of imports under current 50 CFR 17.40(e)(2) and (e)(6) and paragraph (e)(10) under a new paragraph (e)(11).

The protections this final rule provides to African elephants are described below. Nothing in this final rule will affect other legal requirements applicable to African elephants and their parts and products.

Import of Live Elephants

As noted above, we established new requirements for trade in live African elephants. Much work regarding trade in live elephants under CITES has occurred in recent years and helps to inform this final rule. The proposed rule (87 FR 68975, November 17, 2022) discussed the developments from CoP17 (Johannesburg, September–October 2016) up to CoP19 (Panama City, November 2022) in detail, including relevant amendments to Resolution Conf. 11.20 on *Definition of the term 'appropriate and acceptable destinations'* and development of guidance related to trade in live African elephants. Additionally, decisions taken and guidance adopted at CoP19 further support the need for this rulemaking and are summarized below. As explained in our proposed rule, this recent CITES history and resolutions, decisions, and guidance surrounding the export and import of live African elephants from range countries underscores the need for the United States to address these issues in this final rulemaking, and to establish clear regulatory requirements for U.S. activities with live elephants to enhance the conservation of African elephants in all range countries.

Based on comments received on the proposed rule, we re-analyzed the data for live African elephants reported in the CITES trade database (*https://trade.cites.org/*). The total number of live African elephants of all origins (*e.g.,* sourced from the wild, captive-bred, or when the source was unknown) reported in the CITES trade database (*https://trade.cites.org/*) increased from 174 individuals (as reported by the importing country) between 2008 and 2013 to 354 individuals (as reported by the importing country) between 2014 and 2019. In the periods 2008–2013 and 2014–2019, the number of live wild-sourced African elephants exported/re-exported outside the continent of Africa increased from 100 individuals (as reported by the importing country) to 138 individuals (as reported by the importing country), a 38 percent increase. During this same time, the number of live wild-sourced African elephants traded within the continent of Africa increased from 25 individuals (as reported by the importing country) to 199 individuals (as reported by the importing country), a 696 percent increase.

Overall, the data show an increase in trade in live African elephants of 96.7 percent (based on importer reported data) during this time period. However, the data also show a shift in the trade of live wild-sourced African elephants. Between 2008 and 2013, 80 percent of the trade in live wild-sourced elephants was reported as exports outside the African continent, while only 36 percent was reported from 2014 to 2019. Yet, during 2014 to 2019, 59 percent of the trade in live wild-sourced elephants occurred within the continent of Africa, while only 20 percent occurred between 2008 and 2013. These values do not include the trade of African elephants (originally sourced from the wild) between countries outside the African continent. Moreover, the number of exported or re-exported wild-sourced live African elephants between any two Parties increased in the more recent years, even when excluding records for reintroduction purposes, with 82 individuals (as reported by the exporting country) exported/re-exported between 2008 and 2013, and 179 individuals (as reported by the exporting country) exported/re-exported between 2014 and 2019. This is an increase of approximately 118 percent in the international trade of live elephants during this time period. Although the CITES Trade Database is incomplete, contains traded elephants of an unknown source, and may double-count elephants in instances where trade occurred for the same elephant more than once within the allotted timeframe, the available trade data demonstrates that live African elephants, particularly wild-sourced elephants, have been traded in higher numbers in recent years, the majority within the continent of Africa.

To generate funds for wildlife conservation and to mitigate human-elephant conflict, an auction of live elephants took place in 2020–2021 by the Ministry of Environment, Forestry and Tourism of Namibia. The auction advertised the sale of 170 live elephants and ultimately sold 57. Fifteen of those elephants sold were moved to a private reserve in Namibia and will remain there and the remaining 42 were to be exported. Twenty-two elephants were exported to the United Arab Emirates. At this time, 20 elephants are still to be taken from the wild, and their ultimate destination is not yet publicly known.

We are amending the section 4(d) rule as proposed to remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17. We are also establishing the standards used to evaluate ''enhancement'' under the ESA for the import of wild-sourced live African elephants under 50 CFR 17.40(e)(10). As proposed, an enhancement determination for import of wild-sourced live African elephants will require prior receipt of the properly documented and verifiable annual certification provided by the government of the range country to the Service. In consideration of comments received, we have modified the criterion at § 17.40(e)(10)(ii)(A) to include circumstances where specific offtake is biologically sustainable, even if the overall population in the range country is not currently assessed as stable or increasing. This revised criterion reads: ''(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country.''

Additionally, this rule finalizes the proposed list of factors regarding the reporting of funds to be spent toward conservation of the species. Through this rule, § 17.40(e)(10)(ii)(H) includes a non-exhaustive list of concrete examples of how funds derived from activities with African elephants should be used to significantly and positively contribute to African elephant conservation. In this final rule, in consideration of comments received on the need for additional flexibility for range countries and local communities, we have modified the enhancement criterion that outlines how funds derived from live elephant imports should be applied toward African

elephant conservation. While achieving meaningful enhancement will often require that the top use of funds derived from activities with elephants be directed to elephant conservation, we are providing more flexibility for applicants and range countries to demonstrate the significance of the amount of funds put toward African elephant conservation when determining whether the activities enhance the survival of the species in the wild. We have replaced the word ''primarily'' with ''significantly,'' as that term better represents the requirement that funding be provided in an amount that will lead to meaningfully enhancing the survival of African elephants in the wild to allow us greater flexibility in determining if enhancement has been satisfied based on the information available.

Aside from that change in terminology, the list of factors in the annual certification at § 17.40(e)(10)(ii)(A)–(I) is the same in this final rule as had been proposed. The Service will consider these factors as part of the determination whether the import of a wild-sourced live African elephant meets the enhancement standard for issuance of a threatened species permit.

We note that these regulations apply to import of live African elephants from all countries of origin, regardless of country of export or re-export and, therefore, require import permits for African elephants from both Appendix–I and Appendix–II populations. The country of origin/country of export is the country where the animal is taken from the wild or bred in captivity. Under section 9(c)(2) of the ESA (16 U.S.C. 1538(c)(2)) and our regulations at 50 CFR 17.8, the ESA provides a limited exemption for the import of some threatened species. Importation of threatened species that are also listed under CITES Appendix II are presumed not to be in violation of the ESA if the importation is not made in the course of a commercial activity, all CITES requirements have been met, and all general wildlife import requirements under 50 CFR part 14 have been met. This presumption can be overcome, however, through issuance of a section 4(d) rule requiring ESA authorization prior to import, which rebuts the presumptive legality of otherwise qualifying imports (see *Safari Club Int'l* v. *Zinke,* 878 F.3d 316, 328–29 (D.C. Cir. 2017)). For example, the Service retained the requirement for ESA enhancement findings prior to the import of sport-hunted trophies in 1997 and 2000, when the four populations of African elephants were transferred from CITES Appendix I to CITES Appendix II subject to an annotation.

We amended the African elephant section 4(d) rule in 2014 and 2016 and again maintained the requirement for an ESA enhancement finding prior to allowing the import of African elephant sport-hunted trophies. As the D.C. Circuit held in *Safari Club,* ''[s]ection 9(c)(2) in no way constrains the Service's section 4(d) authority to condition the importation of threatened Appendix–II species on an affirmative enhancement finding. Under section 4(d) of the ESA, the Service 'shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of [threatened] species' and may 'prohibit with respect to any threatened species any act prohibited . . . with respect to endangered species.' 16 U.S.C. 1533(d). Because the Service may generally bar imports of endangered species, *see id.* § 1538(a)(1)(A), it may do the same with respect to threatened species under section 4(d), *see id.* § 1533(d).'' The D.C. Circuit went on to explain that ''promulgation of a blanket ban would be permissible and rebut the presumptive legality of elephant imports. If the Service has the authority to completely ban imports of African elephants by regulation under section 4(d), it logically follows that it has authority to allow imports subject to reasonable conditions, as provided in the [section 4(d) rule for African elephants].''

African elephant range countries are increasingly interested in selling live African elephants as a means to reduce overpopulation of elephants in some areas and to generate revenue. Accordingly, to effectively implement the ESA, the United States must have sufficient regulatory safeguards in place to ensure that the United States does not generate a demand for an illegal or unsustainable African elephant trade. Further, if the United States is a destination for trade in live African elephants, then we need to ensure that the trade is not only legal and sustainable, but also enhances the survival of the species in the wild, including by ensuring that revenue generated by the trade is going back into elephant conservation to address human-elephant conflict, habitat loss, poaching, and other threats to the survival of African elephants.

Our final rule requires an enhancement finding for the issuance of threatened species permits under 50 CFR 17.32 for the import and export (including re-export) of any live African elephant to enhance the species' conservation and survival, allowing us to evaluate all live African elephant imports and exports more carefully and consistently, in accordance with legal standards and the conservation needs of the species. Additionally, the issuance of threatened species enhancement permits under 50 CFR 17.32 means that the standards under 50 CFR part 13 are also in effect for imports of all elephants from all populations. Examples of those standards include the requirement that an applicant submit complete and accurate information during the application process and the ability of the Service to deny permits in situations where the applicant has been assessed a civil or criminal penalty under certain circumstances, failed to disclose material information, or made false statements. Therefore, we have determined that the additional safeguard of requiring the issuance of threatened species enhancement permits under 50 CFR 17.32 prior to the import and export of live African elephants is warranted.

Care of Live Elephants After Import and Other Permitted Transfers

As explained previously, the Division of Scientific Authority evaluates facilities importing African elephants to determine if the facility is suitably equipped to house and care for the live elephants to be imported. These ''suitably equipped to house and care for'' findings for live specimens are made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65. Currently, the known total of live African elephants (*Loxodonta africana*) in the United States is 139 (as of 9/22/2023). The Service does not currently regulate or maintain data on the number and location of captive-held African elephants once within the United States. All data are from a voluntary database submitted by zoos (Species360 Zoological Information Management System (ZIMS), 2023). Elephant sanctuaries and other elephant-holding institutions including zoos may exist in the United States but not participate in Species360 and are, therefore, not listed in this database. As a result, the reported number of 139 elephants is a minimum number.

These 139 elephants are located across 33 institutions. This captive population consists of 30 males and 109 females with 5 births in the last 12 months (Species360 ZIMS, 2023). In recent years, from 2013 to 2019, the United States imported 23 live elephants (LEMIS database). The Service concludes there is a need to provide oversight of transfers of live elephants within the United States to

ensure live elephants are going only to facilities that are suitably equipped to house and care for them. That oversight will help ensure the conservation and long-term survival of elephants in the United States, thereby helping reduce the pressure on elephants from the wild and increasing the long-term conservation and survival of elephants in the wild by reducing the overall number of imports to maintain elephants in captivity in the United States.

The best available information demonstrates that bringing elephants into captivity impairs their viability—they are not self-sustaining in captivity, and continuous importation is required for breeding purposes. Ensuring that the elephants imported into the United States and any subsequent movement of those elephants and their offspring are carefully regulated is necessary to minimize future removals from the wild. Median lifespan of zoo-born African elephants is 17 years, compared with 56 years in a well-studied wild population (Clubb et al. 2008). Mortality in the first 2 years is over 30 percent for captive-born animals, compared to 4–25 percent in wild populations. An estimated 54 percent of captive-born African elephant calves in the United States die while still juveniles (Prado-Oviedo et al. 2016). Removal from the wild impacts not only the individuals that are being removed but also the population being left behind. The effect of removing wild elephants from their family group, either by culling, hunting, poaching or live capture, impacts the survivability of the wild population. As noted in the proposed rule, in the time since CITES CoP17, a number of African elephant range countries (including members of the African Elephant Coalition) and over 75 elephant scientists and other experts from nongovernmental conservation and animal welfare organizations have expressed concern over the impact on the well-being of the animals involved and on those remaining in the wild in Africa (See, *e.g.,* SC69 Inf. 36).

Substantive comments submitted during the comment period indicate the transfer of elephants between facilities in the United States is common. Prado-Oviedo et al. (2016) reviewed data on Asian and African elephants in the North American Regional Studbooks as of 2012. They found that, of the total population, more than 80 percent of elephants experienced at least one inter-zoo transfer during their lives, with imported African elephants transferred at a higher rate than imported Asian elephants. All imported elephants experienced at least one transfer (import to a zoo was counted as one), and ''94% experienced at least one subsequent transfer post-importation. In contrast, 45% (33/73) of captive born individuals had not experienced a transfer event.''

Elephants imported into the United States may not remain in the initial facility that has been determined to be suitably equipped to care for and house the animal(s). These animals and their offspring may be moved for breeding purposes, public display, space requirements, or other reasons. Currently, once these animals have been imported, the Service does not evaluate the facilities to which they or their offspring are being moved and receives no assurance that the facilities can adequately house and care for the animals they are receiving.

In Resolution Conf. 11.20 (Rev. CoP18), the CITES Conference of the Parties recommends that all Parties have in place legislative, regulatory, enforcement, or other measures to: prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals. These recommendations were first adopted at CoP17 based on a proposal submitted by the United States and then revised at CoP18 (both of those CITES meetings took place after our finalization of amendments to the section 4(d) rule for African elephants in 2016) and presented new reasons to reconsider our domestic regulation of live African elephants under the ESA.

Additionally, as explained in our proposed rule, to assist Parties in undertaking the obligations of CITES Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it.* Taxon-specific guidance for African elephants was subsequently developed by a working group of the CITES Animals Committee, *Nonbinding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it,* and endorsed by the CITES Standing Committee for consideration of CoP19. The CITES guidance was developed with participation by industry stakeholders, including the Association of Zoos & Aquariums (AZA), and the United States was a member of this working group. CoP19 subsequently considered the guidance, and adopted the guidance, CoP19 Doc. 48; CoP19 Plen. Rec. 2 (Rev. 1), which is available at *https://cites.org/eng/imp/appropriate_and_acceptable_destinations.* Relevant factors in the guidance that support the need for suitably equipped to house and care findings for transfers include, but are not limited to, the following in section A, paragraph 8 of the guidance: ''a) Membership in a recognized Zoo association can provide further reassurance that the destination adheres to the standards and guidelines of that association and helps to exchange males to prevent inbreeding, but it is as such neither a pre-condition for assessment of an appropriate destination, nor a proof that the facility is an appropriate and acceptable destination . . . c) arrangements should be made to ensure that any subsequent sale, donation or transfer of the animal (internationally or domestically) or of any animal born in the facility is also only to a facility suitably equipped to house and care for the specimen.''

In furtherance of these CITES recommendations, developed with leadership from the United States, and to enhance the conservation of African elephants, our final rule addresses these gaps in our domestic regulation of live African elephants by requiring that live African elephants may be sold or offered for sale in interstate commerce and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity only if authorized by a special purpose permit issued under 50 CFR 17.32. Entirely intrastate sale or transfer of African elephants already in the United States is regulated by State law, and in some cases subject to a permit condition and CITES use-after-import requirements, 50 CFR 23.55. As proposed, we are also requiring that each permit issued by the Service for a live African elephant will include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person unless authorized by a special purpose permit issued under 50 CFR 17.32. Each special purpose permit issued for a live African elephant will require a finding that the proposed recipient is suitably equipped to house and care for the live elephant. The evaluation will consider the same criteria and requirements found in 50 CFR 23.65 and applied during import of a live African elephant. While the Service could have gone further under the authority of the ESA, for example by also requiring a separate enhancement finding for each transfer, as is required for interstate commerce in endangered wildlife, we found that this more incremental increase in

requirements was well-tailored to the conservation needs of the species in light of current CITES recommendations.

As noted in the proposed rule, U.S. facilities that have previously been authorized to import live elephants under CITES have complied with ''suitably equipped to house and care for'' requirements. The Service expects that any facility wishing to transfer a live elephant will take necessary steps also to comply with these requirements. For any facility that is in compliance with these requirements, these new permitting requirements will impose a small recordkeeping and fee burden on these facilities and will ensure that any subsequent transfer of the live elephant or its offspring from these facilities is also only to facilities that are suitably equipped to house and care for live elephants.

Together, the permitting requirements in this final rule for any individual or entity subject to the jurisdiction of the United States that engages in activities with live African elephants are necessary and advisable to provide for the conservation of the species. These requirements will help prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and avoid injury, damage to health, or cruel treatment of live elephants in trade; promote the social well-being of these animals; and ensure that any subsequent sale, donation, or transfer of the elephant (internationally or domestically) or of any elephant born in the facility is also only to a facility suitably equipped to house and care for the specimen, as recommended by the CITES Conference of the Parties based on the conservation needs of elephants. Proper housing and care will help ensure the conservation and long-term survival of elephants in the United States, thereby helping reduce the pressure on elephants from the wild and increasing the long-term conservation and survival of elephants in the wild by reducing the overall number of imports to maintain elephants in captivity in the United States.

Import of Personally Sport-Hunted Trophies

Trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, mitigation efforts for human–wildlife conflict, and law enforcement efforts. The IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012; IUCN Species Survival Commission) note that well-managed trophy hunting can ''assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods'' and, further, that well-managed trophy hunting is ''often a higher value, lower impact land use than alternatives such as agriculture or tourism.'' When a trophy-hunting program incorporates the following guiding principles, the IUCN recognizes that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic-cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance.

The ESA enhancement standards outlined in this final rule are consistent with this IUCN guidance and are necessary and advisable to ensure that trophies authorized for import into the United States are only from well-managed hunting. Not all trophy hunting is part of a well-managed or well-run program, and we evaluate import of sport-hunted trophies carefully to ensure that all CITES and ESA requirements are met. Where the applicant has not met their burden to provide sufficient information for the Service to make its findings, including sufficient information to demonstrate that the trophy to be imported is from well-managed hunting, the import will not meet the criteria for an enhancement finding, and, consistent with both the previous regulations and these final regulations, cannot and will not be authorized for import into the United States. Under this final rule, we will continue to carefully evaluate African elephant trophy import applications in accordance with legal standards and the conservation needs of the species.

Under the section 4(d) rule for the African elephant, issuance of an ESA threatened species permit to import a sport-hunted trophy of an African elephant requires that the Service determine that the killing of the trophy animal would enhance the survival of the species (known as an ''enhancement finding'').

We evaluated the process for making ESA enhancement findings related to permit applications requesting the import of sport-hunted trophies of African elephants. We reviewed information within our permit-application files related to the investment of hunting fees that go into the conservation of these species and how they improve local communities and contribute to survival and recovery of elephant populations. We also evaluated how the Service's technical assistance to elephant range countries supports local communities and contributes to sustainable elephant populations. Additionally, we considered how we could improve our permitting process and resulting decisions to ensure that they are consistent with the purpose and intent of the ESA and, as a result, that permits we issue enhance the survival of the species in the wild.

In making ESA enhancement findings, we review all relevant information available to us, including information submitted with the individual permit applications, information received in response to inquiries we make of the range country, and all other reliable information we receive from interested parties, such as species experts, hunting organizations, community groups, and nongovernmental organizations. Historically, the Service periodically issued enhancement findings for the import of African elephant sport-hunted trophies on a country-by-country (or ''countrywide'') basis, based on the scientific and management information available to the Service, as was the practice for a number of other threatened sport-hunted species. In response to a D.C. Circuit Court opinion, *Safari Club Int'l* v. *Zinke,* 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe, Tanzania, South Africa, Botswana, Namibia, and Zambia. No countrywide ESA enhancement findings are currently in effect. We now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service's withdrawal of the countrywide findings and use of the application-by-application approach in *Friends of Animals* v. *Bernhardt,* 961 F.3d 1197 (D.C. Cir. 2020). Therefore, since March 1, 2018, the Service has been making ESA enhancement findings to support permitting decisions on the import of sport-hunted trophies of African elephants on an application-by-application basis, ensuring consistent application of the regulatory criteria across all permit application adjudications. As a matter of policy, the Service continues to have the option of issuing countrywide enhancement findings through a rulemaking process; however, to date, the Service has not chosen this option due to the challenges

of keeping the findings current in light of a lengthy rulemaking process.

The application-by-application process involves additional information requirements, time, and staff resources to complete the review of each application. We used to rely mainly on information concerning the national-level management of a species to produce a single enhancement finding for all permit applications specific to a species, country, and time period. We now make enhancement findings for every individual permit application, considering not only national-level species management but also species management on a smaller scale (*e.g.,* on a regional or concession/conservancy-area basis), as well as information about each hunter's individual circumstances, such as the specific hunting dates and locations.

Factors Considered by the Service

In our individual application reviews and enhancement assessments for range countries, we consider factors that can contribute to African elephant conservation by improving the management and status of African elephants in the wild, including:

- Establishing and using science-based sustainable quotas, including use of a sex- and age-based harvest system;
- Investing hunting fees into conservation (*e.g.,* anti-poaching, managing human–wildlife conflict, population monitoring, community benefits that provide incentives for conservation of the species in the wild, etc.);
- Implementing and enforcing, and compliance with, wildlife laws and regulations;
- Implementing management plans and use of adaptive management;
- Implementing an effective anti-poaching program;
- Implementing measures to reduce human-wildlife conflict;
- Monitoring populations of the hunted species and their food source; and
- Protecting and improving the habitat of the hunted species (*e.g.,* creating water holes, habitat management, etc.).

Additional Considerations

In our analysis, we consider the available information on:

(1) Whether the range country of the hunt has regulations, infrastructure, and standard processes in place to ensure an effective transfer of hunting revenues back into conservation of the species;

(2) whether the range country has effective governance and strong compliance and enforcement measures, particularly with regard to their ability to implement the wildlife management regulations developed for the hunted species;

(3) whether the hunting operator is in compliance with the range country's regulatory requirements;

(4) whether the hunting property owner, concessionaire, and/or community are effectively investing the revenue to elicit community incentives for protection of the species; and

(5) whether the hunter is in compliance with the hunting laws, regulations, and operator requirements.

An evaluation of these factors allows the Service to assess how the range-country government manages the hunted species and how hunting serves to enhance the survival of the species in the context of the management system; how hunting serves to enhance the survival of the species in the context of the management unit at the hunting-operator, concessionaire, conservancy, or private-reserve level; and how the individual hunter has contributed (where the hunt has already taken place) or will contribute (where the hunt has not yet taken place) to enhancement of survival of that species through their hunting activities and any associated contributions to the survival of the species. Our process for making enhancement findings encourages conservation investments and sustainability of elephant populations. We evaluate not only national conservation efforts, but also how the hunting operator for the applicant's hunt works to address threats to the hunted species (*e.g.,* making habitat improvements, conducting anti-poaching and other activities, etc.).

The Service's ESA enhancement evaluation includes an analysis of whether the revenue generated through hunting fees is used to support conservation of the species. It is the responsibility of the entity that collects the hunting fees to reinvest those funds back into conservation of the species, including addressing threats to the species that are specific to that area or elephant population. For example, if an agency of the range country's government collects hunting fees, then we expect the government to have standard processes and infrastructure in place to ensure an effective transfer of hunting revenues back into the country's management of the species. If a smaller management unit such as an operator, private property owner, or conservancy is responsible for collecting hunting fees, then we expect a portion of those fees to be reinvested into conservation of the hunted species.

When practicable, the Service conducts site visits or other outreach during which we engage with the national, provincial, and regional governments, as well as communities, to establish whether activities are achieving enhancement of the species. The Service also assists range countries by explaining U.S. requirements for import of personal sport-hunted African elephant trophies and supports capacity-building in range countries. The Service's complementary approach to leveraging conservation of elephants through its ESA regulatory permitting requirement of enhancement of the species, combined with our technical assistance to support capacity-building in range countries, effectively contributes to creating incentives for local communities to protect elephant populations and sustain elephant populations within the range country.

By considering whether the revenues from elephant hunts are effectively reinvested in conservation programs for the species and community benefits, we can determine whether these targeted investments improve the survival of elephants and improve local communities that are working to conserve the species. It can be challenging to obtain the information for a robust analysis, which involves consultation with the range country and often with those involved in various aspects of the hunt, a process that requires a great deal of staff time and other resources. In sum, enhancement findings can be an effective tool for conservation, as trophy hunters are able, by complying with our enhancement requirements, to help conserve elephant populations and their habitats and provide protection incentives to communities that live alongside these species.

Annual Certification for Range Countries

To clarify and improve the permitting process, this final rule adds to 50 CFR 17.40(e)(6) a new provision that establishes an annual certification requirement for range countries that export sport-hunted trophies destined for the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This requirement and the information from the range countries will better enable us to ensure that authorized imports contribute to enhancing the conservation of the species and do not contribute to the decline of the species. In addition, any quotas set by range countries for sport-hunted trophies are typically

established on an annual basis. Reviewing information on an annual basis will allow for monitoring of these yearly quotas and the ability to evaluate adaptive-management approaches in meaningful timeframes.

Clarifying the enhancement standards and improving this process for the import of African elephant sport-hunted trophies increases transparency with stakeholders and enables more efficient evaluations of applications. Although findings for the import of African elephant sport-hunted trophies will continue to be made under an application-by-application basis, application evaluations will be more efficient under these revised regulations because nationwide management information for the species must be provided on an annual basis by the range country. We note that the certification from the range country to the Service can reflect if there are no or minimal changes from one year to the next. This final rule does not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. Additionally, the import of any associated sport-hunted trophy into the United States will continue to be regulated and require an enhancement finding and threatened species import permit. An enhancement determination for African elephant sport-hunted trophies under 50 CFR 17.40(e)(6)(i)(B) and 50 CFR 17.32 will require prior receipt of properly documented and verifiable annual certification provided by the government of the range country to the Service. As stated previously, in consideration of comments received, we have modified the criterion at § 17.40(e)(6)(ii)(A) to include circumstances where specific offtake is biologically sustainable, even if the overall population in the range country is not currently assessed as stable or increasing. This revised criterion reads: ''(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain sport hunting at the level authorized by the country.''

Additionally, this rule finalizes the proposed list of factors regarding the reporting of funds to be spent towards conservation of the species. Through this rule, § 17.40(e)(6)(ii)(G) includes a non-exhaustive list of concrete examples of how funds derived from activities with African elephants should be used to significantly and positively contribute to African elephant conservation. Considering comments received on the need for additional flexibility for range countries and local communities, in the final rule we have modified the enhancement criterion that outlines how funds derived from sport-hunted trophy imports should be applied toward African elephant conservation. While achieving meaningful enhancement will often require that the top use of funds derived from activities with elephants be directed to elephant conservation, we are providing more flexibility for applicants and range countries to demonstrate the significance of the amount of funds put toward African elephant conservation when determining whether the activities enhance the survival of the species in the wild. We have replaced the word ''primarily'' with ''significantly'' as that term better represents the requirement that funding be provided in an amount that will lead to meaningfully enhancing the survival of African elephants in the wild. This allows us greater flexibility in determining if enhancement has been satisfied based on the information available. We have removed the enhancement criterion that requires 100 percent of African elephant meat from a hunt to be donated to local communities. We recognize there are situations where there are no inhabitants, or other circumstances where it would be inappropriate to include this requirement. We also recognize that this form of support to local communities, if applicable, may also be addressed as a method used to prevent or mitigate human-elephant conflict under proposed paragraph (e)(6)(ii)(G)*(7).* Accordingly, in this final rule we have removed proposed paragraph (e)(6)(ii)(G)*(8).*

Aside from these changes, the final rule text at § 17.40(e)(6)(ii)(A)–(G) contains the same list of factors in the annual certification as proposed. The Service will consider these factors as part of the determination whether the import of an African elephant sport-hunted trophy meets the enhancement standard.

Under this final section 4(d) rule, we will continue to require an ESA enhancement finding and issuance of a threatened species permit for import of each African elephant sport-hunted trophy. This requirement will continue to allow us to carefully evaluate each trophy import in accordance with legal standards and the conservation needs of the species. Through this rule, we are clarifying what is considered during enhancement evaluation, by requesting information as part of the annual certification process. While we already consider the information requested in the annual certification process, we will not hold hunters to standards that did not exist at the time of their hunts and their import applications. The regulations pertaining to sport-hunted trophies will apply to applications for import where the hunt date is on, or after, the effective date of this rule.

Elephant Imports and the CITES National Legislation Project

The provisions of CITES and the ESA and their respective requirements for the issuance of permits for African elephants are distinct and complementary in furthering African elephant conservation. While the United States alone implements the ESA, CITES is implemented by the United States and other national governments. The ability of each Party to fully implement CITES underpins international efforts to conserve and enhance African elephant conservation. For U.S. African elephant conservation efforts to be successful, it is imperative that other Parties have national legislation in place that meets the basic requirements to implement CITES. We therefore amended the previous section 4(d) rule; the final rule makes each exception to the prohibition on import in the section 4(d) rule that applies to live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies contingent on being accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (50 CFR 23.7; *https://www.cites.org*). We will thereby prohibit these imports from any Party that does not meet the basic requirements to implement CITES, and at the same time encourage CITES Parties to amend their national legislation to achieve a CITES Category One designation.

We have identified certain narrow circumstances under which the import of African elephant parts and products other than ivory into the United States from a country that has not achieved Category One under the CITES National Legislation Project may benefit conservation of African elephants, specifically import for law enforcement purposes and genuine scientific purposes. To accommodate these circumstances, we have included limited exceptions to the CITES National Legislation Project Category One requirement for imports for law enforcement purposes and for genuine scientific purposes that benefit the conservation of African elephants. These narrow exceptions parallel and will follow the same requirements as the exceptions for law enforcement purposes and for genuine scientific

purposes currently established for the import of African elephant ivory (50 CFR 17.40(e)(7) and (e)(8)). Additionally, in consideration of comments received, particularly from African elephant range countries, the CITES National Legislation Project Category One requirement will take effect after CITES CoP20 (anticipated to be held in 2025), in order to give range countries additional time to comply with this requirement and to ensure the requirement is supportive of countries making efforts to comply.

The United States is a strong proponent of the National Legislation Project and has provided assistance to countries to help them achieve Category One. For example, in recent years the legislation of Angola and Jordan has been placed in Category One. The United States provided support to Angola and Jordan in their efforts toward these achievements. This provision is designed to have decreasing effect over time and to ensure countries that wish to trade in African elephants with the United States enact and continue to maintain Category One national legislation as a Party to CITES. The CITES National Legislation Project is designed to encourage and assist every Party to achieve Category One designation. When each country achieves CITES Category One designation, by enacting sufficient national legislation to meet the basic requirements of CITES, as required of each Party under the Convention, then this provision will have no effect with regard to that country. For countries that have already achieved Category One, this provision will have no effect, so long as the country remains a Party to CITES and maintains Category One national legislation.

Proposed Rule, Public Hearing, and Public Comments Received

On November 17, 2022, we published a proposed rule (87 FR 68975) to revise the rule for the African elephant, promulgated under section 4(d) of the ESA and codified at 50 CFR 17.40(e). Originally, we opened the public comment period for 60 days, until January 17, 2023. On January 17, 2023, we extended the public comment period for an additional 60 days, to March 20, 2023 (88 FR 2597). On January 5, 2023, we held a virtual public hearing on the proposed changes to the African elephant section 4(d) rule. The hearing was held both in English (including an option for subtitles) and French so that representatives from African elephant range countries could participate. The public hearing was well attended by the public, nongovernmental organizations, and range countries. A common request during the public hearing was to extend the comment period, which we did. Comments received during the public hearing have been addressed in the comment responses, below.

We received 138,668 comments in response to the proposed rule, including 4 letter-writing campaigns with more than 111,606 signatures. Three of the letter-writing campaigns were in strong support of strengthening the African elephant regulations and proposed that the Service implement a ban on the import of live elephants and sport-hunted trophies. Counting each of the letter-writing campaigns as one substantive comment, approximately 600 of the comments received were substantive. We received comments from individuals, hunting organizations, zoological associations, conservation/environmental organizations, other nongovernmental organizations, range countries, and concerned citizens.

Request for extension of the comment period. We received a number of comments that requested that we extend the public comment period beyond 60 days as originally provided in the proposed rule. We extended the public comment period by an additional 60 days to March 20, 2023, to give the public, stakeholders, and our range country partners an additional opportunity to provide comments and supporting data on the proposed rule.

General comments. It is clear from the comments we received that there are strongly held views in the United States on the conservation and trade in African elephants. Regardless of perspectives and positions, there is overwhelming concern for elephant populations and a belief that the U.S. Government should take steps to protect elephants in Africa. Many commenters urged us to implement a complete ban on the import of live African elephants and/or sport-hunted trophies; others stated that the proposed regulations were too stringent and will lead to less funding available for African elephant conservation. Some commenters provided information in support of their positions; some offered specific suggestions and amendments to the proposed regulatory text; and others offered opinions regarding the protection and conservation of African elephants. In developing this final rule, we evaluated the comments and information received. We note that there were several comments that provided African elephant data but did not reference where that data came from. In these circumstances, we were not able to consider the numbers as we could not confirm the source. We appreciate the careful consideration given to this proposal by the many groups, organizations, range countries, and individuals who provided comments. A summary and analysis of specific comments that were inside the scope of the rulemaking follows:

(1) Comment: A commenter recommended clarifying that the annual certification requirement is applicable to every country that exports any African elephant specimens. The commenter requested that the Service define what constitutes an African elephant trophy and the appropriate CITES reporting codes (TRO or H) in the CITES trade database. The commenter recommended that the Service use the purpose code ''H'' as the standard for identifying elephant trophy imports into the United States.

Response: The annual certification requirement applies to all wild-sourced African elephants, regardless of whether the import is for a live or a sport-hunted trophy, as both actions would remove or has functionally removed an elephant from the wild. The import of a captive-bred African elephant from a non-range country will still require an enhancement determination to be made but will not require the annual certification from the range country as the animal would not be removed from the wild. We have defined the term ''sport-hunted trophy'' at 50 CFR 23.74, and that definition will apply to any African elephant sport-hunted trophies. The term ''hunting trophy'' includes, among other requirements, the need for the trophy to be ''legally obtained by the hunter through hunting for his or her personal use.'' Many parts and products imported into the United States are not obtained by hunting or are not solely for personal use of the hunter and would, therefore, not meet the definition.

(2) Comment: Several commenters requested that the annual certification criteria for the import of live African elephants and elephant trophies be strengthened and expanded. Specifically, multiple commenters believe the Service should make clear what type of evidence must be submitted to properly document and verify elephant populations. They requested that the rule specify: who is to make that determination, how many years of population data is necessary to determine a trend, and that that data must be submitted for each elephant population, including transboundary populations, or, at a minimum, for those elephant populations targeted for the potential capture and removal of live elephants in the range country. There were recommendations to require a certification be dated within a year.

Additionally, there was a recommendation that the Service divide the proposed certification requirements into two separate certifications: one that may be submitted on an annual basis and includes the country-wide determinations reflected in proposed paragraph (e)(10)(ii) in criteria (A) through (E) and another that must be submitted on a permit-by-permit basis and includes the import-specific determinations contemplated in proposed paragraph (e)(10)(ii) in criteria (F) through (I).

Response: We have carefully considered the annual certification criteria and conclude that the standards we published in the proposed rule will help provide us with the data to make a conservation-based decision while not being overly burdensome, particularly for range countries. The clarification of the enhancement standards contains the information considered when making an enhancement determination. This includes using the best available data and information on population estimates, including historically and at the present.

(3) Comment: A commenter expressed concern that the annual certification requirements for elephant trophy exporting countries will further delay issuance of permits and recommended that the current measures continue with modification to facilitate a more-efficient permitting process.

Response: The information identified as being requested as part of the annual certification process is already currently considered in the processing of applications for sport-hunted trophies as part of the enhancement finding required for a threatened species import permit under 50 CFR 17.32. Our intent in requiring an annual certification is to clarify the enhancement standards and increase transparency with stakeholders. If there are no or minimal changes from one year to the next, the certification from the range country to the Service will be able to reflect this situation. By requiring certification, this information will be provided by the range country on an annual basis and will improve application evaluation efficiency.

(4) Comment: A commenter requested clarification regarding ''properly documented'' and ''certifiable'' information that a range country recognizes its African elephants as a ''valuable resource'' and clarification in the criterion regarding ''regulating governments follow the rule of law concerning African elephant conservation and management.'' The commenter recommended that the Service request supporting materials such as the range country's constitution, statutes, and regulations, policies, management plans/strategies, or other relevant written conservation documents as applicable that provide evidence of its recognition that African elephants are valuable resources. In addition, they commented the Service should require information on conservation and management of its elephant populations, including relevant statutes, regulations, policies, strategies, guidelines, and best management practices at the county, municipal, district, or village levels, depending on how elephant conservation and management are governed.

Response: We have carefully considered the annual certification criteria and conclude that the standards we published in the proposed rule provide us with the data to make a conservation-based decision while not being overly burdensome, particularly for range countries. We recognize that the information we have requested may come in different forms from different range countries. In this rule, we are clarifying the enhancement criteria and will review all information submitted by the range country. Should any additional clarification be required to complete the review of an application, we may request additional information from the range country.

(5) Comment: A commenter requested clarification regarding ''practical capacity'' and whether that term includes the number of employees (*i.e.,* managers, scientists, law enforcement personnel) dedicated to African elephant conservation, the amount of funding available for elephant conservation, and the political will of the government and its leadership to conserve elephants.

Response: Conservation programs across range countries differ. We expect that revenues generated from the activity of the removal of the elephant from the wild will be reinvested into the conservation of the species and combat threats to the populations within the range country. Each range country will be required to provide documentation to explain how this is achieved.

(6) Comment: A commenter requested clarification regarding the phrase ''the current viable habitat of these populations is secure and is not decreasing or degrading'' and ensuring confirmation that that habitat is not decreasing in quantity or quality, or not being degraded by natural or anthropogenic factors. The commenter recommended that range countries: (1) identify any existing potential threats to viable elephant habitat, such as timber harvest, mining, road construction, authorized or unauthorized development, livestock grazing, climate change, wildfires (particularly those intentionally set by humans), land clearing and conversion, and poaching; and (2) articulate the specific actions taken to prevent, reduce, or mitigate such threats. Further, the commenter believed that range countries should be asked to provide copies of any laws, regulations, and management plans that govern land uses and extractive industries that may pose threats to the quantity and quality of viable elephant habitat to ensure that such legal standards are sufficient to manage the impact of threats to elephant habitat.

Response: Our intent under the section 4(d) rule is to clarify the enhancement standards and increase transparency with stakeholders. Through this rule, we are clarifying what information from the range country is considered during enhancement evaluation, by requesting the information as part of the annual certification process. Due to the required certification, the range country will provide this information on an annual basis, which will improve application evaluation efficiency. The information requested as part of the annual certification process is already currently considered in the processing of applications for sport-hunted trophies as part of the enhancement finding required for a threatened species import permit under 50 CFR 17.32. We recognize that what may qualify as enhancement is likely to vary due to regional, national, and local ecological realities.

(7) Comment: Several commenters requested clarification on the criterion that ''the elephants have been considered for in situ conservation programs, and consideration has been given to moving elephants to augment extant wild populations or reintroduce to extirpated ranges'' and how the Service will ensure range countries provide properly documented and verifiable information demonstrating consideration of using the elephants for in situ conservation programs, to augment extant wild populations, or to reintroduce to extirpated ranges. Specifically, a commenter stated the Service should require the following: (1) Identify by name the government official and agency and/or park or area administrator contacted regarding an in situ conservation transfer, a wild elephant population augmentation project, and/or a reintroduction effort; (2) provide copies of correspondence with the government agency, person, or other entity administering the area; (3)

provide documentation to confirm that such outreach to potential in situ conservation, augmentation, and reintroduction programs both domestically and within the natural range of African elephants has been undertaken; and (4) include in its certification package written evidence as to why none of the options pursued were feasible. The commenters requested clarification about the methodologies regarding reproducible counting, surveying, or assessing elephant populations and recommended that if extrapolation is used to estimate elephant population size, underlying assumptions should be disclosed. Additionally, they suggested requiring the applicant to demonstrate that it has consulted with the IUCN African Elephant Specialist Group. The commenters suggested inserting language into the rule that would require range countries to demonstrate why in situ placements are unattainable for the elephant that has been approved for export. Lastly, it was suggested that the rule clarify that revenue a range country would make cannot be used as a basis to justify rejection of viable in situ or wild placements.

Response: While the form of documentation suggested by the commenter would be a useful way to meet the criterion, the information may come in different forms from different range countries. To ensure we are not being overly burdensome on range countries while still receiving the appropriate information to make an informed conservation decision, in this final rule we are not overly prescriptive about the form of documentation provided. Should any additional clarification be required to complete review of an application, we may request this information from the range country. The rule requires prior receipt of properly documented and verifiable annual certification provided by the government of the range country that the elephants have been considered for in situ conservation programs, and consideration has been given to moving elephants to augment extant wild populations or reintroduce to extirpated ranges.

(8) Comment: A commenter requested that the Service make clear in the final rule that the burden of providing the information for the requisite enhancement findings for range countries desiring to export live elephants and/or elephant trophies to the United States must fall on the range country and not on the individual permit applicant.

Response: The burden to provide sufficient information to approve a permit application remains on the applicant, as with all ESA permits. The ESA states explicitly (in section 10(g)) that a person seeking the benefit of an exception bears the burden of demonstrating that the exception is met. Where the applicant has not met their burden to provide sufficient information for the Service to make its findings, including sufficient information to demonstrate that the trophy to be imported is from well-managed hunting, the import will not meet the criteria for an enhancement finding, and, consistent with both the previous regulations and the regulations in this final rule, cannot and will not be authorized for import into the United States. However, certain necessary information may be available only from the range country. This final rule seeks to streamline and improve transparency around the permitting process and better ensures the Service is provided necessary information when making decisions on applications. As the African elephant is listed as a threatened species under the ESA, import of African elephant sport-hunted trophies is limited to activity that enhances the survival of the species in the wild. This final rule clarifies the enhancement criteria for our assessment of an application for the import of an African elephant sport-hunted trophy. Applications will continue to be evaluated on an application-by-application basis, but the clarified enhancement criteria include the requirement to obtain information on the status and management of the African elephant within the range country on an annual basis.

(9) Comment: A commenter recommended additional alternatives that do not include the assumption that trophy hunting promotes conservation and consider the beneficial economic impacts from non-consumptive activities.

Response: The section 4(d) rule does not include an assumption that trophy hunting promotes conservation. We have previously described in the proposed rule and prior rulemakings how a well-managed trophy-hunting program can contribute to conservation. We acknowledge that not all trophy hunting is part of a well-managed program, and we evaluate the import of sport-hunted trophies carefully to ensure that all CITES and ESA criteria are met. The clarification of the ESA enhancement criteria seeks to increase transparency with stakeholders when making this evaluation. Trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, mitigation efforts for human–wildlife conflict, and law enforcement efforts. The IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012) note that well-managed trophy hunting can ''assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods'' and, further, that well-managed trophy hunting is ''often a higher value, lower impact land use than alternatives such as agriculture or tourism.'' When a trophy-hunting program incorporates the following guiding principles, the IUCN recognizes that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic-cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance. The ESA enhancement standards in the rule are consistent with this IUCN guidance and are necessary and advisable to ensure that trophies authorized for import into the United States are only from well-managed hunting.

(10) Comment: A commenter supported additional regulations along with expanding the Category One designation to include additional species and tying issuance of any permits to the status of the exporting or re-exporting party's CITES implementing legislation.

Response: This rule relates to section 4(d) regulations for African elephant only. Considering use of the CITES Category One requirement for additional species is beyond the scope of this rulemaking.

(11) Comment: Several commenters stated that the CITES Category One requirement has no conservation benefit and goes against the intention of CITES, because there is no correlation between a country having Category One status and the success of their conservation efforts. They suggested that the Service assist range countries to achieve Category One status, as the Service has for other countries, instead of what they consider to be a more punitive approach. Several commenters, including several range countries, expressed concerns about the impact of Category One requirements on range countries and the potential to prematurely prohibit trade and sport hunting if applied. Some commenters suggested that CITES Category One status be a minor consideration and not a requirement under the final rule.

Response: We appreciate and understand the concern of several commenters, including several range countries, regarding implementation of the Category One requirement and the effect it may have on range countries and trade. Accordingly, we have finalized the CITES National Legislation Project Category One requirement to take effect after CITES CoP20 (anticipated to be held in 2025). We made this change to give range countries additional time to comply with this requirement and to ensure the requirement is supportive of countries making efforts to comply. As explained above, achieving Category One status of the CITES National Legislation Project is accomplished by meeting the basic requirements to implement CITES through the Party's adoption of national laws to implement the treaty. These requirements include designating at least one Management Authority and one Scientific Authority, prohibiting trade in specimens in violation of the Convention, penalizing such trade, and confiscating specimens illegally traded or possessed. Allowing imports only from countries that have achieved a Category One designation under the CITES National Legislation Project will improve confidence that the exporting or re-exporting country has the capacity to appropriately implement requirements for trade in African elephants and enforce protections for the species.

(12) Comment: A commenter recommended more transparency in elephant relocations and to publish the notice of the certification of applications and allow for public comment on the information.

Response: We did not propose to, and this final rule does not, require publication of receipt of applications or permit decisions for African elephants. The final rule is consistent with other applications received for an ESA permit for a threatened species under 50 CFR 17.32(a).

(13) Comment: Many commenters stated that importing live or dead elephants into the United States does not enhance the species' conservation in the wild, as required by the ESA. They stated that the Service has no effective way to ensure that any import of an African elephant (or elephant trophy) promotes the conservation of the species and suggested the rulemaking prohibit or ban the import of both live elephants and their trophies.

Response: Import of African elephants is already prohibited by the section 4(d) rule, subject to certain exceptions provided for in the regulations implementing the section 4(d) rule. This final rule amends several of those exceptions to the prohibition on import, as described herein, including to add an import permit requirement for live elephants, clarify and improve the transparency and efficiency of enhancement finding requirements for sport-hunted trophies, and include requirements related to the CITES National Legislation Project. However, as explained above and in the proposed rule, this final rule does not include a ban on import of African elephants without exception. In addition to being unprecedented for endangered or threatened species under the ESA, a complete ban on the import of live elephants could require institutions exhibiting African elephants to rely on captive-breeding programs to replenish their stock, which could affect opportunities for genetic material exchanges. In addition, since elephants may face human–elephant conflict, for example as a result of their impact on local agriculture, some amount of culling could continue to occur despite a ban. A ban of this nature would conflict with efforts to encourage well-managed elephant conservation efforts by range countries that are engaged in this trade. Rather, we intend the amendments to the section 4(d) rule to continue to encourage African countries and people living with elephants to enhance their survival and provide incentives to take meaningful actions to conserve the species and put much-needed revenue back into elephant conservation. This rule also ensures that we do not allow imports in circumstances where elephants are not well-managed and better ensures that any live elephants in trade and their offspring are well taken care of throughout their lifetimes.

(14) Comment: A commenter stated that while the Service has statutory authority under the ESA to require permits for interstate commercial transfers of endangered or threatened species, it does not have authority to require permits for noncommercial transfer. In addition, the commenter believed that the Service's interpretation of ''industry or trade'' within the definition of ''commercial activity'' is unlawful and will restrict the intended limitations on the use of live elephants in interstate commerce in the course of a commercial activity.

Response: Potential amendments to the current definition of ''industry or trade'' in 50 CFR 17.3 are outside the scope of this rulemaking. The regulations at 50 CFR 17.3 define ''industry or trade'' in the definition of ''commercial activity'' in section 3 of the ESA to mean ''the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit.'' Whether a proposed activity is ''in the course of a commercial activity'' involves considering whether, based on the facts, the proposed activity is ''in pursuit of gain or profit'' for either party to the intended transfer. While it is not entirely clear which activities with elephants are of concern to the commenter under the current definition, we take this opportunity to provide examples that would meet the definition of ''industry or trade'' under 50 CFR 17.3 in addition to buying, selling, or offering to buy or sell. Example: listed wildlife is held in captivity, and the owner offers to send the animal to a second owner of listed wildlife as a breeding loan in exchange for half of the offspring produced from the breeding loan. The wildlife has been held or used in the course of a commercial activity—the offer for a breeding loan in exchange for offspring produced from the breeding loan was an intended transfer of wildlife from one person to another person in the pursuit of gain or profit. The results of this example would be the same if the first owner had loaned the animal to the second owner for a week in exchange for monetary compensation. The results of this example would also be the same if the owner received nothing in return for the temporary transfer, but the second owner intended to gain or profit by selling or otherwise commercializing the offspring.

(15) Comment: A commenter believed the Service is imposing its own animal-care standards on a zoo that may be receiving an animal for a noncommercial purpose.

Response: In Resolution Conf. 11.20 (Rev. CoP18), the CITES Conference of the Parties recommends that all Parties have in place legislative, regulatory, enforcement, or other measures to: Prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals. These recommendations were first adopted at CoP17 and revised at CoP18, and related guidance on live elephants was adopted at CoP18 and CoP19 (all three of those CITES meetings took place after our finalization of amendments to the section 4(d) rule for African elephants in 2016) and present new reasons to reconsider our domestic regulation of live African elephants under the ESA. As explained above, to assist Parties in undertaking the obligations of CITES

Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it.* Taxon-specific guidance for African elephants was subsequently developed by a working group of the CITES Animals Committee, *Nonbinding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it,* and endorsed by the CITES Standing Committee for consideration of CoP19. The CITES guidance was developed with participation by industry stakeholders, including the AZA, and the United States was a member of this working group. CoP19 subsequently considered and adopted the guidance, CoP19 Doc. 48; CoP19 Plen. Rec. 2 (Rev. 1). According to this guidance, arrangements should be made to ensure that any subsequent sale, donation, or transfer of the animal (internationally or domestically) or of any animal born in the facility is also only to a facility suitably equipped to house and care for the specimen pursuant to the standards of CITES.

(16) Comment: A commenter believed the regulations should go further and that the Service, AZA, other zoological associations, and individual zoological parks should phase out African elephants from public display. The commenter explained that this could be done by ceasing all breeding, allowing the animals to live out their lives in their current facilities or transferring them to well-managed sanctuaries, and prohibiting the future import of African elephants. Lastly, the commenter requested that the Service not consider exhibition or conservation education as enhancement.

Response: We disagree with the suggestion to phase out African elephants on public display as such elephants play an important role in conservation awareness and efforts. The standards in this final rule for live African elephants are based on guidance from several CITES meetings. As explained previously, to assist Parties in undertaking the obligations of Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it.* CoP19 adopted further taxon-specific *Non-binding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it.* According to this guidance, arrangements should be made to ensure that any subsequent sale, donation, or transfer of the animal (internationally or domestically) or of any animal born in the facility is also only to a facility suitably equipped to house and care for the specimen.

(17) Comment: A commenter opined that the only facilities that should be considered ''suitably equipped'' to house live African elephants are accredited sanctuaries, as these facilities specialize in rehabilitating abused and traumatized elephants, while providing conditions and care aimed at restoring both physical and psychological health.

Response: ''Suitably equipped to house and care for'' findings for live specimens are made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65. The evaluation for permits for live African elephants under this final rule will consider the same criteria and requirements found in 50 CFR 23.65 and applied during import of a live African elephant. This incremental increase in requirements for activities with live African elephants is well-tailored to the conservation needs of the species in light of current CITES guidance and recommendations.

(18) Comment: A commenter suggested the Service clarify when a special purpose permit would be needed for transfer of a live African elephant. Specifically, they pointed out a potential loophole in the proposed rule: if the same person or organization has multiple facilities, they would not need a special purpose permit even if some of their facilities did not meet the standards outlined in the proposed rule. Additionally, they questioned if a special purpose permit would be needed if an elephant was leased to another person.

Response: We clarified the language in this final rule. Our intention in the proposed rule was to ensure that any time an African elephant is moved, the intended recipient must be suitably equipped to house and care for the specimen at the location where it is to be housed and cared for, regardless of the nature of the transfer. We have revised the language in proposed paragraph (e)(10)(iv) to clarify that each special permit to transfer an elephant must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person *or location* without a special purpose permit. Adding the requirement that the permittee be authorized by permit to transfer an animal to another location (e.g., to a facility located on a different premises, or pursuant to a temporary loan or lease) adds clarity to the permit's condition.

(19) Comment: A commenter suggested that the final rule state that the Service must seek advice from the Animals Committee about whether the proposed transfer is a suitable ''exceptional circumstance.'' They suggested that if the Animals Committee concludes that a proposed transfer is not an exceptional circumstance, the Service should not allow the import.

Response: The comment refers to the CITES process under Resolution Conf. 11.20 (Rev. CoP18) for export outside the species' natural and historical range in Africa of wild-sourced live African elephants from a population with an ''appropriate and acceptable destinations'' annotation. Additionally, at CoP19, the Conference of the Parties adopted Decision 19.168, which temporarily extends the same process to all exports of wild-sourced live African elephants outside the species' natural and historical range in Africa. The Service would seek advice from the Animals Committee, and consider any advice provided, in reaching a decision on an application to import live elephants subject to an applicable CITES process. As explained in our proposed rule, the U.S. Government's understanding of the process established by Resolution Conf. 11.20 (Rev. CoP18), paragraph 1, is that, under the resolution, and currently under Decision 19.168, the Animals Committee has a consultative role, meaning it is given an opportunity to advise the Parties involved (the exporting country and the importing country) on whether the proposed trade meets the exception. In its role, the Animals Committee does not make the decision—the Animals Committee's advice does not allow or disallow the trade—and the Animals Committee does not need to agree with the Parties' decisions. It is for the Parties concerned to consider any advice offered by the Animals Committee and any other relevant information that may be available to them and make their own decisions on whether to allow the trade.

(20) Comment: A commenter stated that the Service did not include several aspects covered by the CITES *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it,* as well as new guidance agreed at CITES CoP19 specific to African elephants. The commenter suggested that the rule include all

guidance, as well as in subsequent revisions to 50 CFR part 23.

Response: As previously noted, CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it,* and CoP19 adopted further taxon-specific *Non-binding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it.* This guidance will aid the Service in determining whether live African elephants are going to facilities that are suitably equipped to house and care for them when it makes findings in accordance with 50 CFR 23.65. We note that our regulations in 50 CFR 23.65 enable us to consider the factors in the non-binding guidance adopted by the Parties at CoP18 and CoP19, as applicable to a specific situation when making a suitably equipped to house and care for finding. However, further amendments to 50 CFR 23.65 are outside the scope of this rulemaking and may be considered in subsequent revisions to 50 CFR part 23.

(21) Comment: In relation to the needs of elephants in captivity, several commenters pointed to reports on African elephant biology, ethology, and social structure and provided literature that states African elephants are wide-ranging, vastly intelligent, sentient beings with a highly organized social structure who form strong family bonds that can last a lifetime. The commenters stated that African elephants require access to large, complex, stimulating ecological and social environments, and the freedom to exercise choice over their foraging options and companions. The commenters suggested that live African elephants have 100 hectares or more of diverse, natural habitat so individual elephants have the opportunity to live fulfilling lives.

Response: The needs of elephants in captivity, including space and behavior, are considered and addressed in our finding as to whether or not the proposed recipient is suitably equipped to house and care for the live elephant(s), made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65.

(22) Comment: Several commenters believed the African elephant care standards in the proposed rule are unnecessary as the requirements are already covered by CITES provisions. In addition, they claimed there is no evidence of an ESA concern, and they believed the regulations would be an unnecessary regulatory burden and the Service would be implementing regulations beyond its scope and mission if it is unable to show a conservation need that has arisen since the finding in its 2016 rulemaking. They believed there is no African elephant conservation-related basis for including the additional provisions related to import and domestic holding and movement of elephants. In addition, the commenters believed the additional provisions will likely impede movements of elephants for breeding purposes to support a sustainable population in human care. They stated that the U.S. Department of Agriculture (USDA) has a clear mandate to implement and enforce the Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*), which they believe is adequate to ensure that elephants are well cared for in the United States. They stated that the proposed regulations may undermine African elephant conservation because the Service cannot keep up with permitting responsibilities and the proposed regulations will add to the burden. Lastly, they stated that if the Service does finalize the regulations, they should require AZA accreditation as prima facie evidence that these standards are already being met.

Response: The standards in the proposed rule for live African elephants are based on guidance from several CITES meetings. In Resolution Conf. 11.20 (Rev. CoP18), the CITES Conference of the Parties recommends that all Parties have in place legislative, regulatory, enforcement, or other measures to: Prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals. These recommendations were first adopted at CoP17 and then revised at CoP18 (both of those CITES meetings took place after our finalization of amendments to the section 4(d) rule for African elephants in 2016) and present new reasons to reconsider our domestic regulation of live African elephants under the ESA.

To assist Parties in undertaking the obligations of Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted: *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it.* To address taxon-specific considerations, CoP19 further adopted: *Non-binding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it.* According to this guidance, section A, paragraph 8, ''arrangements should be made to ensure that any subsequent sale, donation or transfer of the animal (internationally or domestically) or of any animal born in the facility is also only to a facility suitably equipped to house and care for the specimen.'' Additionally, we find that it is appropriate to adopt the ''suitably equipped to house and care for'' provisions outlined in the proposed rule as USDA does not conduct ''suitably equipped to house and care for'' findings under the AWA. Lastly, we do not agree that requiring AZA accreditation as prima facie evidence that the standards are already being met would be adequate in implementing the CITES guidance. As explained in the CITES guidance, ''[m]embership in a recognized Zoo association can provide further reassurance that the destination adheres to the standards and guidelines of that association and helps to exchange males to prevent inbreeding, but it is as such neither a pre-condition for assessment of an appropriate destination, nor a proof that the facility is an appropriate and acceptable destination.'' We will utilize the CITES guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it. This guidance will be used with the factors found in 50 CFR 23.65. As noted in the proposed rule, U.S. facilities that have previously been authorized to import live elephants under CITES have complied with ''suitably equipped to house and care for'' requirements at 50 CFR 23.65.

The Service expects that any facility wishing to accept a transferred live elephant will take necessary steps also to comply with these standards. For any facility that complies with these standards, these new permitting requirements will impose a small recordkeeping and fee burden on these facilities and will ensure that any subsequent transfer of the live elephant or its offspring from these facilities is also only to facilities that are suitably equipped to house and care for live elephants. This rulemaking addresses more than AZA facilities and applies to transfer of African elephants by any individual or entity in the United States, including both AZA and non-AZA institutions. According to the AZA, of the approximately 2,800 animal exhibitors licensed by the USDA across the country, fewer than 10 percent are AZA-accredited.

(23) Comment: A commenter opined that the ''suitably equipped to house and care for'' standards are unnecessarily rigid and African elephant welfare is less about available space and more about how that space is utilized. They mentioned several studies that they claimed prove that good elephant welfare is not about facility space but about individualized care for specific animals within specific circumstances.

Response: Living-space requirements fall outside of scope of this rule. However, we will utilize the CITES guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it. This guidance will be used with the factors found in 50 CFR 23.65.

(24) Comment: A couple commenters stated that the proposed rule does not hold zoos accountable to meet the necessary standards for providing a benefit to elephants. They suggested that zoos must submit evidence that their elephant exhibits measurably improve public education and lead to actions promoting conservation of the species, to prove their interests are noncommercial.

Response: The section 4(d) rule requires issuance of an import permit prior to import of elephants into the United States, which will require zoos or other importers or exporters to demonstrate a conservation benefit to elephants in the wild in order to support an enhancement finding for the proposed activity. While the Service could have gone further under the authority of the ESA, for example by also requiring a separate enhancement finding for each transfer, as is required for interstate commerce in endangered wildlife, we found that the more incremental increase in requirements in this rule was well-tailored to the conservation needs of the species in light of current CITES recommendations. The needs of elephants in captivity are considered and addressed in our finding as to whether the proposed recipient is suitably equipped to house and care for the live elephant(s), made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65.

(25) Comment: A commenter suggested the Service add several additional parameters regarding live African elephants and recommended that the Service add specific criteria tailored to the species regarding food and water requirements, access to an off-exhibit area, staff training and experience, and suitable veterinary care. The commenter urged the Service to require that elephants not be housed alone and that offspring remain with their mothers until they are naturally weaned. The commenter requested the Service not allow the use of bullhooks, also known as goads. The commenter urged the Service to consider climate conditions when assessing the sufficiency of the space available for African elephants under 50 CFR 23.65(c)(1). The commenter suggested the Service make a finding that the proposed activity is not for primarily commercial purposes, relying upon the criteria set forth under 50 CFR 23.62.

Response: The needs of elephants in captivity are considered and addressed in our finding as to whether the proposed recipient is suitably equipped to house and care for the live elephant(s), made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65. In addition, to assist Parties in undertaking the obligations of Article III, paragraphs 3 b) and 5 b) of the Convention and paragraph 2 a) of Resolution Conf. 11.20 (Rev. CoP18), CoP18 adopted *Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it.* CoP19 adopted further taxon-specific *Non-binding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it.* This guidance will be used with the factors found in 50 CFR 23.65.

(26) Comment: A commenter believed that the rule will undermine conservation efforts and hamper the ability of zoos to effectively manage animal groups to sustain a genetically diverse and biologically sound population. The commenter stated that transfers of live elephants domestically is frequently done for breeding purposes related to species survival plans, that identify population goals and recommendations to manage a genetically diverse, demographically varied, and biologically sound population, and to support conservation and education efforts related to these species.

Response: We understand the importance of these programs to support conservation and education efforts related to African elephants and their habitat. The rule will not prohibit those programs but will ensure that live elephants are going only to facilities that are suitably equipped to house and care for them, helping ensure the conservation and long-term survival of elephants in the United States, thereby helping reduce the pressure on elephants from the wild and increasing the long-term conservation and survival of elephants in the wild by reducing the overall number of imports to maintain elephants in captivity in the United States.

(27) Comment: A commenter recommended stricter regulations on trade in elephant parts (non-ivory, trophy, or live elephants) that will include an ESA permit. The commenter provided information regarding the demand for other products including elephant hides that may negatively impact the survival of the species.

Response: We disagree with the concern that the limited legal trade in elephant parts and products other than ivory and sport-hunted trophies may negatively impact the survival of African elephants. We are aware of no information to indicate that legal trade for commercial use in compliance with CITES of elephant parts and products other than ivory and sport-hunted trophies has had any effect on the rates or patterns of illegal killing of elephants and the illegal trade in ivory. However, the CITES National Legislation Project contains several requirements related to enforcement actions due to illegal trade. By allowing imports of parts and products only from Category One countries, with limited exceptions for law enforcement purposes and genuine scientific purposes, we are ensuring that parts and products are imported into the United States only by countries able to fully implement the CITES Treaty.

(28) Comment: A commenter questioned the applicability of the rule to the progeny of wild-caught African elephants or to the movement of biological samples, including semen. The commenter opined that the public cannot properly comment on the proposed rule without further clarification on these points.

Response: The preamble to the proposed rule and this final rule provide information regarding the trade in live African elephants and their offspring, including care of live elephants after import and other permitted transfers. Parts and products other than ivory and sport-hunted trophies continue to be excepted from the ESA permitting requirement under the rule. However, the import of those items will be restricted to Category One countries under the CITES National Legislation Project, meaning they will be imported, with limited exceptions for law enforcement purposes and genuine scientific purposes, only from countries that have met the requirements to implement the CITES Treaty and only in accordance with CITES permitting requirements.

(29) Comment: A commenter expressed concern that there is no recognition of the benefit that sport-hunting fees can have on the construction of schools, medical facilities, water sources, sewage, or other improvements in living conditions or development of any kind, and that the Service specifies only what the community must add regarding the conservation of elephants. The commenter requested that the Service expand the requirements for use of funds derived from a sport hunt if enhancement has been met.

Response: Our intent under the section 4(d) rule is to clarify the enhancement standards and increase transparency with stakeholders. Through this rule, we are clarifying what is considered during enhancement evaluation, and including a non-exhaustive list of concrete examples of how funds derived from activities with African elephants should be used significantly and positively to contribute to African elephant conservation. In this final rule, in consideration of comments received on the need for additional flexibility for range countries and local communities, we have modified the enhancement criterion that outlines how funds derived from live elephant and sport-hunted trophy imports should be applied toward African elephant conservation. To allow us greater flexibility in determining if enhancement has been satisfied based on the information available, we have replaced the word ''primarily'' with ''significantly'' as that term better represents the requirement that funding be provided in an amount that will lead to meaningfully enhancing the survival of African elephants in the wild. While achieving meaningful enhancement will often require that the top use of funds derived from activities with elephants be directed to elephant conservation, we are providing more flexibility for applicants and range countries to demonstrate the significance of the amount of funds put toward African elephant conservation when determining whether the activities enhance the survival of the species in the wild.

(30) Comment: Several commenters recommended that the Service withdraw the rulemaking because they believe the Service failed to consult meaningfully with range countries. The commenters stated that the Service did not meet procedural obligations for consultation under CITES Resolution Conf. 6.7 on *Interpretation of Article XIV, paragraph 1* prior to adopting stricter domestic measures under the ESA. The commenters stated that the Service failed to consult with range countries on how the proposed rule would affect the range countries' conservation and management programs of elephants, elephant habitat, human–wildlife conflict, and community-based natural-resources-management programs.

Response: We disagree with the commenters that there are legal obligations for consultation under CITES Resolution Conf. 6.7 and that we have failed to consult meaningfully with range countries. While the recommendations in CITES Resolution Conf. 6.7 are not legally binding, the United States makes a concerted effort to implement the CITES Resolutions because we acknowledge that they represent the interpretation and longstanding guidance of the CITES Conference of the Parties for effective implementation of the Convention. We note that under article XIV, paragraph 1 of the Convention, each Party retains the right to adopt stricter national measures that regulate or prohibit the import, export, taking, possession, or transport of any CITES species. In Resolution Conf. 6.7, the Parties recommend that prior to taking such actions for non-indigenous species as are allowed under article XIV, paragraph 1, Parties ''make every reasonable effort to notify the range countries of the species concerned at as early a stage as possible prior to the adoption of such measures, and consult with those range countries that express a wish to confer on the matter.''

In promulgating this rule, we have made every reasonable effort to notify range countries and have consulted with range countries that have expressed a wish to confer on the matter, following the text, spirit, and intent of the Resolution during the public-comment process for the proposed rule. Publishing a proposed rule does not inhibit the consultation process. Rather, it gives the range countries, and the public, draft regulations and agency reasoning on which to comment. This rulemaking comment process often leads to a more robust consultation process and, as here, improves the final rule adopted by the agency. During the public-comment period on the proposed rule, which was originally open for 60 days and then extended for an additional 60 days (for a total of 120 days), we hosted a virtual public meeting and also accepted written comments. During the public-comment period, we offered to conduct individual African elephant range country consultations. Several range countries took us up on our offer, and we held consultations for every range country that made a request. Noting the above, we conclude that we have meaningfully consulted with range countries.

(31) Comment: A commenter stated that proprietary operator and government information should not be broadcasted.

Response: The rule does not require publication of notices of receipt of applications or permit decisions, consistent with other applications received for an ESA permit for a threatened species under 50 CFR 17.32(a).

(32) Comment: A commenter opined that any revisions to the African elephant section 4(d) rule should only apply prospectively to applications to import a sport-hunted trophy after the effective date of the new rule.

Response: We have amended the final rule accordingly, so the new regulations at 50 CFR 17.40(e)(6)(ii) pertaining to import of sport-hunted trophies will apply where the hunt date is on, or after, the effective date of this rule.

(33) Comment: A commenter stated that any standard that delays the processing of trophy imports or could be used as an angle in a lawsuit to support anti-hunting arguments against hunting and its benefits should be removed from the rule.

Response: The intent of the rule is to clarify the enhancement standards and increase transparency with stakeholders. The standards in the rule clarify what is considered during enhancement evaluation. By requiring annual certification, information will be provided by the range country on an annual basis and will improve application evaluation efficiency.

(34) Comment: Several commenters urged the Service to strengthen the enhancement permit requirements for sport-hunted trophies. Suggestions included requiring scientific evidence and methodology for how the elephant trophy will enhance the survival of the species; requiring specific demographic information on the local, neighboring, and range-wide populations; requiring a range country to have scientifically based population data and a funded plan to continue monitoring for population trends; reviewing of any CITES trade suspensions; requiring joint management plans between countries with shared elephant populations that are subject to trophy hunting; ensuring regulating governments follow the rule of law concerning African elephant conservation and management; ensuring range countries have the capacity to reliably ensure that trophies have been lawfully taken; and denying any permit application if a hunt was completed without the presence of a guide who is

properly licensed by the host country. Additional recommendations included requiring that permit applications report the hunting methods used; the amounts paid for hunting services, permits, and any other fees; information on the payees; and information on anyone else involved in the hunt (guides, observers, etc.) and their affiliations and licensures.

Response: We have carefully considered the criteria and conclude that the standards we published in the proposed rule provide us with the data needed to make a conservation-based decision while not being overly burdensome, particularly for range countries. We recognize that the information we have requested may come in different forms from different range countries. Should any additional clarification be required to complete review of an application, we may request additional information from the range country. The purpose of this rule is not to disincentivize trophy hunting when it is conducted within the bounds of a well-regulated, scientifically supported management system. Rather, the purpose of this proposed rule is to clarify what factors are considered as part of the determination of whether the import of an African elephant sport-hunted trophy meets the enhancement standard. We consider all relevant conservation threats when making enhancement findings and conduct a robust science-based analysis of species conservation before issuing permits for the import of ESA-listed sport-hunted trophies. The information provided to address the certification criteria must be scientifically based and verifiable, as reflected in the rule, which requires prior receipt of documented and verifiable certification related to each of the certification criteria.

(35) Comment: Several commenters were concerned that the requirements for determining elephant population and status trends over very large land areas be updated annually by range countries via aerial survey were expensive, unreliable, and unreasonable. They stated that annual monitoring is not needed for such a long-lived species, and far better systems for monitoring the sustainability of hunting through triangulation and adaptive management exist. They suggested the Service use trophy quality as a metric and not population status. They requested that, at a minimum, the Service extend the required population surveys to every 5 years.

Response: Our intent under this rule is to clarify the enhancement standards and increase transparency with stakeholders. Through this rule, we are clarifying what we consider during enhancement evaluation, by requesting the information as part of the annual certification process. By requiring certification, this information will be provided by the range country on an annual basis and will improve application evaluation efficiency. We already consider the information requested as part of the annual certification process in the processing of applications for sport-hunted trophies as part of the enhancement finding required for a threatened species import permit under 50 CFR 17.32. We recognize that what may qualify as enhancement is likely to vary due to regional, national, and local ecological realities and will not be uniform across these scales. We disagree with the commenter's assessment that population-trend data is not necessary for determining the conservation status of a species. We agree that this data should not be analyzed by itself and additional circumstances must be considered.

In the process of determining enhancement, we are evaluating whether trophy hunting (and subsequent import), as a conservation measure, is likely to reduce the threat of extinction facing the species. To make this determination, we must fully understand the conservation status of the African elephant population within a range country, including population status or trend data related to the species as a whole. We are not requiring that each criterion be updated annually if doing so is not appropriate or feasible. If there are no or minimal changes from one year to the next, the certification from the range country to the Service can reflect this status. Rather, under this rule, we will require a verifiable certification that the criteria have been met. If our evaluation determined that the requirements were no longer met, we will work with the range country to communicate and address any concerns. We will continue to consider all findings on an application-by-application basis and take into account the conservation realities of the hunt area and the individual hunter.

(36) Comment: Several commenters believed that language requiring African elephant populations needing to be ''stable or increasing,'' as well as sufficiently large to sustain sport hunting at the level authorized by the country, is vague and unreasonable in certain circumstances, as some areas may require increased elephant quotas, more protection, or elephants regularly traveling between multiple countries. The commenters provided examples such as overpopulation of African elephants, which are degrading habitat, in some areas and that in some of these areas increasing or maintaining the size of the population would not necessarily provide enhancement for the conservation of the species.

Response: We have amended the final rule accordingly. We have revised the enhancement criteria that requires African elephant populations in a range country to be stable or increasing for import of live African elephants and sport-hunted trophies. We have replaced the term ''stable or increasing'' with ''biologically sustainable.'' The term ''biologically sustainable'' gives us flexibility when making our enhancement determinations and allows us to consider circumstances where specific offtake is biologically sustainable, even if the overall population in the range country is not currently assessed as stable or increasing, such as possible scenarios where African elephants are overpopulated and have a negative impact on habitat and biodiversity. The clarification of the enhancement criteria supports the evaluation on whether the proposed activity will contribute toward the recovery of the species in the wild. The import of each specimen must meet this standard.

(37) Comment: A commenter disagreed with the Service's proposed evaluation of habitat quality as enhancement criteria. The commenter stated that there are too many factors to consider, some of which cannot be controlled by communities or range countries.

Response: We disagree. The analysis of habitat quality is an essential metric for determining the conservation status of a species in the wild. This information can be acquired using scientifically supported methods and is a common metric used in management decisions across the world. Similarly, we understand that communities and private landowners are essential for the conservation of African elephant habitat. However, this relationship falls under a legal framework that is regulated and enforced by a governmental body. We must ensure that the activity performed falls within this legal framework and is approved by a regulating government.

(38) Comment: Several commenters expressed concern that the regulations for sport-hunted trophies will reduce beneficial trade and not benefit African elephants. The commenters explained that, given the rigor of CITES, the proposed regulations are redundant and unnecessary. The commenters stated that the Service has not provided

scientific or economic justification and the regulations will undermine conservation incentives, since hunting revenues benefit range countries and African elephant conservation.

Response: Our intent under the new regulations for sport-hunted trophies is to clarify the enhancement standards and increase transparency with stakeholders. Through these regulations, we are clarifying what we consider during enhancement evaluation by requesting the information as part of the annual certification process. The certification requirement will lead range countries to provide this information on an annual basis, improving application evaluation efficiency. We already consider the information requested as part of the annual certification process when we process applications for sport-hunted trophies as part of the enhancement finding required for a threatened species import permit under 50 CFR 17.32. We acknowledge that well-managed trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, mitigation efforts for human–wildlife conflict, and law enforcement efforts. The IUCN Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012) note that well-managed trophy hunting can ''assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods'' and, further, that well-managed trophy hunting is ''often a higher value, lower impact land use than alternatives such as agriculture or tourism.'' When a trophy-hunting program incorporates the following guiding principles, the IUCN recognizes that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic-cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance. The ESA enhancement standards in the rule are consistent with this IUCN guidance and are necessary and advisable to ensure that trophies authorized for import into the United States are only from well-managed hunting.

(39) Comment: A commenter asked the Service to further clarify the term ''funds derived'' in paragraph (e)(6)(ii)(G) of the proposed rule and recommended that the term include all funds associated with trophy hunting, including permit fees, hunting guide costs, and any other amounts paid by trophy hunters and any other individuals or organizations involved with the hunt. The commenter also suggested that the term include the gross amounts, and not just net profits derived from the hunt. Lastly, the commenter recommended that the Service require that 100 percent of ''funds derived'' be applied to African elephant conservation.

Response: Funds derived from sport-hunting is broadly defined. We will consider any and all verifiable information provided in our determination of whether the funds contribute to African elephant conservation. We expect that revenues generated from the activity of the removal of the African elephant from the wild will be reinvested into the conservation of the species and combat threats to the populations within the range country. Each range country will be required to provide documentation to explain how this reinvestment is achieved. However, it is unreasonable to expect that all funds be applied to African elephant conservation. Such a requirement would be counterproductive to elephant conservation as it could remove financial incentive for local communities and private landowners to conserve and protect African elephant populations or habitat.

(40) Comment: A commenter suggested that the Service develop a fair-chase standard and require trophy import permit applicants to demonstrate that a given hunt meets this standard. The commenter suggested that failure to meet this standard should result in denial of the permit application.

Response: The Service does not authorize or prohibit hunting in foreign countries. Range countries will decide whether to establish a fair-chase standard. To the extent that management measures (including application of fair-chase standards) affect the survival of the species in the wild, we will consider them as part of our overall enhancement determination.

(41) Comment: A commenter suggested that the Service should require range countries to report at least 10 years of historical elephant conservation funding, the origins of that funding, how that funding was used, and the successes and failures of conservation projects. The commenter suggested that the Service require that the historical, 10-year average of hunting revenues do not exceed more than five percent of the overall conservation budget.

Response: The rule requires that information provided as part of the annual certification be verifiable, including information on funds contributed to African elephant conservation. This will ensure we have the data needed to make a conservation-based decision while not being overly burdensome, particularly for range countries. We recognize that the information we have requested may come in different forms from different range countries. Should we require any additional clarification to complete review of an application, we may request additional information from the range country. Additionally, we do not see a benefit of limiting the conservation value received through trophy hunting.

(42) Comment: A commenter recommended that the Service clarify what certifications it will require from the range countries and list the factors it will use to independently determine whether the specific import of an elephant trophy will enhance the survival of the species. The commenter recommended that the Service make the findings and its sources of information used to make the decision available to the public.

Response: We recognize there may be some variability in how range countries deliver the requested information and that the information may come in different forms from different range countries. To ensure that we are not being overly burdensome on range countries while still receiving the appropriate information to make an informed conservation decision, in this final rule we are not overly prescriptive about the form of documentation provided. As previously noted, the burden to provide sufficient information to approve a permit application remains on the applicant, as with all ESA permits. Where the applicant has not met their burden to provide sufficient information for the Service to make its findings, including sufficient information to demonstrate that the trophy to be imported is from well-managed hunting, the import will not meet the criteria for an enhancement finding and, consistent with both the previous regulations and these final regulations, cannot and will not be authorized for import into the United States. However, certain necessary information may be available only from the range country. This final rule seeks to streamline and improve transparency around the permitting process and will better ensure that the Service is provided necessary information when making decisions on applications. The rule does not require publication of receipt of applications or permit decisions, consistent with other applications received for an ESA permit

for a threatened species under 50 CFR 17.32(a).

(43) Comment: A commenter questioned what evidence the Service would require as proof that the trophies have been legally taken from a specific population.

Response: We recognize that what may qualify as evidence that a trophy was legally taken is likely to vary across range countries. We will consider all documentation provided by the range country and applicant, which may include but is not limited to, laws, regulations, and corresponding required documentation such as an issued permit.

(44) Comment: A commenter questioned the requirement that 100 percent of African elephant meat be used by local communities, believing that this requirement is too stringent and would require the range countries to create an expensive information-collection system at local levels.

Response: We recognize there are situations where hunting occurs and there are no nearby inhabitants or other circumstances where it would be inappropriate to include this requirement. We also recognize that this form of support to local communities, if applicable, may also be addressed as a method used to prevent or mitigate human–elephant conflict under paragraph (e)(6)(ii)(G)(*7*). Accordingly, we have removed proposed paragraph (e)(6)(ii)(G)(*8*) that required elephant meat be distributed to local communities from the final regulations.

(45) Comment: Several commenters opined that the proposed regulations are the first step in banning sport hunting and will hurt African elephant conservation efforts by imposing unnecessary, counterproductive, and overly burdensome sport-hunting requirements that will decrease conservation funding to range countries. The commenters provided examples where they believe African elephants are overpopulated and have a negative impact on biodiversity and climate change. The commenters stated that hunting has a negligible impact on African elephant populations and the Service is trying to impose unnecessary regulations.

Response: We did not propose to ban sport-hunted trophies of African elephants, and this final rule does not impose such a ban. We recognize that what may qualify as enhancement is likely to vary due to regional, national, and local ecological realities. We do not require that each criterion be updated annually, if doing so is not appropriate or feasible. If there are no or minimal changes from one year to the next, the certification from the range country to the Service can reflect this situation. Rather, under this rule, we require a verifiable certification that the criteria have been met. If our evaluation determines that the requirements are no longer being met, we will work with the range country to communicate and address any concerns. All findings will continue to be considered on an application-by-application basis and take into account the conservation realities of the hunt area and the individual hunter.

(46) Comment: A commenter stated that the proposed rule disregards the ESA section 9(c)(2) exemption.

Response: We disagree. As explained in the proposed rule, and above in the preamble to this rule, under section 9(c)(2) (16 U.S.C. 1538(c)(2)) and our regulations at 50 CFR 17.8, the ESA provides a limited exception from threatened species permitting requirements for qualifying imports of some threatened species that are also listed under CITES Appendix II. The presumption of section 9(c)(2) and 50 CFR 17.8 is overcome through issuance of a section 4(d) rule requiring ESA authorization prior to import, which rebuts the presumptive legality of otherwise qualifying imports (see *Safari Club Int'l* v. *Zinke,* 878 F.3d 316, 328–29 (D.C. Cir. 2017)). As the D.C. Circuit held in *Safari Club,* ''[s]ection 9(c)(2) in no way constrains the Service's section 4(d) authority to condition the importation of threatened Appendix-II species on an affirmative enhancement finding. Under section 4(d) of the ESA, the Service 'shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of [threatened] species' and may 'prohibit with respect to any threatened species any act prohibited . . . with respect to endangered species.' 16 U.S.C. 1533(d). Because the Service may generally bar imports of endangered species, *see id.* § 1538(a)(1)(A), it may do the same with respect to threatened species under section 4(d), *see id.* § 1533(d).'' The D.C. Circuit went on to explain that ''promulgation of a blanket ban would be permissible and rebut the presumptive legality of elephant imports. If the Service has the authority to completely ban imports of African elephants by regulation under section 4(d), it logically follows that it has authority to allow imports subject to reasonable conditions, as provided in the [4(d) rule for African elephants].''

(47) Comment: Multiple commenters requested that the Service eliminate or suspend the two-elephant-per-year limit in the current rule. They stated that the two-per-year limit adds to permitting delay because the first two must be imported before the applicant can file another application. Specifically, they requested that the Service revise the African elephant section 4(d) rule to four elephants per calendar year to cover 2 successive years of double hunts. The commenters requested that the two-per-year rule be suspended until 2 or more years after the permitting backlog is addressed and recommended a Director's Order to suspend the 2-per-year rule effective immediately.

Response: We have analyzed the information in the petition submitted by Conservation Force (summarized earlier in this preamble) and the public comments received as part of this rulemaking. We conclude that the limit of the provision regarding two African elephant trophies import permits per calendar year, which originally published in the 2016 revision to the African elephant section 4(d) rule, remains appropriate. We do acknowledge some of the petitioner's points regarding delay in the permitting process but conclude that the original reasoning for the regulation remains intact and is unrelated to delay in permit processing. In response to a D.C. Circuit Court opinion, *Safari Club Int'l* v. *Zinke,* 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe and now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service's withdrawal of the countrywide findings and implementation of the application-by-application approach in *Friends of Animals* v. *Bernhardt,* 961 F.3d 1197 (D.C. Cir. 2020). We do recognize that the application-by-application process involves additional information requirements, time, and staff resources to complete the review of each application. Other factors have also led to delays in permit processing in recent years, including but not limited to the Covid–19 pandemic.

With regard to the annual import limit, we limited the number of sport-hunted African elephant trophies that may be imported into the United States to address a small number of circumstances in which U.S. hunters have participated in elephant culling operations and imported, as sport-hunted trophies, a large number of elephant tusks from animals taken as part of the cull. This practice has

resulted, in some past cases, in the import of commercial quantities of ivory as sport-hunted trophies. Sport hunting is meant to be a personal, noncommercial activity, and engaging in hunting that results in acquiring quantities of ivory that exceed what would reasonably be expected for personal use and enjoyment is inconsistent with sport hunting as a noncommercial activity.

In evaluating an appropriate limit for personal use, we considered actions taken by the CITES Parties in recognition of the need to ensure that imports of certain other hunting trophies are for personal use only. In three different resolutions, the CITES Parties have agreed to limit annual imports of hunting trophies of leopards (no more than two), markhor (no more than one), and black rhinoceros (no more than one). All three of the resolutions containing these annual import limits (Resolution Conf. 10.14 (Rev. CoP19) on *Quotas for trade in leopard hunting trophies and skins for personal use,* Resolution Conf. 10.15 (Rev. CoP14) on *Establishment of quotas for markhor hunting trophies,* and Resolution Conf. 13.5 (Rev. CoP18) on *Establishment of export quotas for black rhinoceros hunting trophies*) recommend, among other things that the Management Authority of the country of import be satisfied that the trophies are not to be used for primarily commercial purposes if they are being imported as personal items that will not be sold in the country of import and the owner imports no more than one or two (depending on the species) trophies in any calendar year.

Based on past practice under CITES and the number of elephant trophies imported each year by the vast majority of U.S. hunters who engage in elephant hunts, two trophies per hunter per year is an appropriate upper limit for the personal use of the hunter, and we conclude that this limit continues to reasonably address our concern. We do not have information to indicate that allowing the import of two trophies per hunter per year would result in import of commercial quantities of ivory or would not be appropriate for personal use and therefore have also not proposed to further reduce the annual import limit.

(48) Comment: A commenter stated that, with paragraph (e)(10)(ii), the Service would allow non-detriment findings made by elephant-exporting countries to subsume its own enhancement findings. The commenter believed this provision will serve to expand the capture and trade of live elephants.

Response: We intend the amendments in this rule to the current section 4(d) regulations to continue to encourage African countries and people living with elephants to enhance their survival and provide incentives to take meaningful actions to conserve the species and put much-needed revenue back into elephant conservation. The amendments also ensure that we do not allow imports in circumstances where elephants are not well-managed and better ensure that any live elephants in trade and their offspring are well taken care of throughout their lifetimes. Our enhancement finding, our non-detriment finding (where applicable for Appendix-I elephants), and the exporting country's non-detriment finding are each separate determinations and are not conflated.

(49) Comment: Multiple commenters requested clarity regarding the timing and locations of determinations of captive-elephant pregnancy status. One commenter believed the annual certification requirement that regulating authorities can ensure that no live African elephants to be imported are pregnant (which the commenter refers to as ''the pregnancy certification'') is a violation of CITES transport guidelines (based on the International Air Transport Association's Live Animal Regulations (IATA LAR)), which advise against the transport of pregnant mammals ''for whom 90% or more of the expected gestation period has already passed.'' The commenter suggested that the Service require a permit to include a condition that pre-transport health checks be conducted, including testing for hormonal indicators of pregnancy, to ensure pregnant females will not be captured or imported. The commenter believed the proposed pregnancy certification conflicts with the family unit certification, which requires that family units are kept intact, and that, under the pregnancy certification, pregnant females must be left behind.

Response: We disagree with the commenter's statement that the annual certification is a violation of CITES transport guidelines. The section 4(d) rule states that, for an importation to qualify for an enhancement finding, regulating authorities of the exporting country must be able to ensure that no live African elephants to be imported are pregnant. In accordance with CITES, and under 50 CFR part 23, each import, export, or re-export of live CITES animals, including all African elephants, must comply with the IATA LAR or, in the case of non-air transport of animal species that may require transport conditions in addition to or different from the LAR, the CITES *Guidelines for the non-air transport of wild animals and plants.* Therefore, the importation of pregnant African elephants is currently a violation, and additional certification will not be necessary.

(50) Comment: A commenter stated that the ''valuable resource'' certification is not meaningful to the Service's enhancement finding and recommended replacing it with language that actually captures the purpose and spirit of the ESA.

Response: We conclude that the term ''valuable resource'' is appropriate and consistent with the conservation purposes of both the ESA and CITES and that further clarification is not necessary. We have carefully considered the annual certification criteria, including the ''valuable resource'' criterion. Different countries and regulating agencies may value species in different ways. For example, the ESA (Section 2(a)) recognizes that fish, wildlife, and plant species are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. Other nations' laws may recognize the economic value or other value of a species as an incentive to pursue their conservation. The essential purpose of the criterion is to ensure the regulating authority in fact recognizes the African elephant as valuable, has an incentive to contribute to their conservation, and further that they have the legal and practical capacity to manage African elephant populations for their conservation. The standards we published in the proposed rule provide us with the data to make a conservation-based decision while not being overly burdensome, particularly for range countries. We recognize that the information we have requested may come in different forms from different range countries. In this rule, we are clarifying the enhancement criteria and will review all information submitted by the range country. Should any additional clarification be required to complete the review of an application, we may request additional information from the range country.

(51) Comment: A commenter stated that while paragraph (e)(10)(ii)(F) of the proposed rule calls for keeping family units intact, the ''maximum extent practicable'' caveat provides a major loophole that will be exploited to exclude elephants who are difficult to handle or to separate young elephants from older family members during capture. The commenter recommended that the Service impose an additional requirement that range countries must

certify that any live elephant sought to be imported has not been orphaned as a result of legal trophy hunting.

Response: The inclusion of ''maximum extent practicable'' provides us with flexibility to ensure that activities that provide enhancement for the survival of the species are not unreasonably prohibited, while ensuring that the involved live animals have in fact been legally taken from the specified populations and family units were kept intact to the maximum extent practicable. We conclude that the additional certification recommended by the commenter is unnecessary.

(52) Comment: A commenter stated that the proposed rule exceeds the authority of the Service under the ESA. The commenter stated that the proposed regulations at 50 CFR 17.40(e)(10) would impose animal-welfare requirements that are not related to the ESA and would create burdensome and duplicative regulatory requirements that could result in conflicts with the provisions of the AWA. The commenter stated that the ESA does not regulate possession of endangered species, nor the welfare of those possessed, and regulates only movement of those species. The commenter stated that all matters that fall under the AWA are the responsibly of the Secretary of Agriculture, who is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by zoos and other exhibitors. Lastly, the commenter stated there is no statutory authority for the Service to seek to permanently control the movement of elephants or other species that have been legally imported.

Response: The final rule's amendment of 50 CFR 17.40(e)(2) and addition of new 50 CFR 17.40(e)(10) removes the current permitting exception for otherwise prohibited activities with live elephants, including import into or export from the United States; sale or offer for sale in interstate or foreign commerce; and delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce in the course of a commercial activity. This final rule also establishes the standards used to evaluate ''enhancement'' under the ESA for the import of wild-sourced live African elephants, while utilizing the criteria in § 17.32(a) for enhancement findings for other imports and exports of live elephants. Under 50 CFR 17.40(e)(10), ''suitably equipped to house and care for'' findings are also required for permits to authorize activities with live elephants. Those findings for live specimens are made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65, which are currently applied during import of a live African elephant and other Appendix–I species, and those findings do not conflict with activities covered under the AWA. USDA does not make the determination regarding whether a facility is suitably equipped to house and care for any specimen, nor does the responsibility of making that determination fall under the AWA. We found that this incremental increase in requirements for activities with live African elephants under the section 4(d) rule is well-tailored to the conservation needs of the species in light of current CITES guidance and recommendations and consistent with our authority under the ESA.

(53) Comment: A commenter stated the rule is inconsistent with CITES and Resolution Conf. 5.10, which the commenter stated clarifies that CITES prohibits the importation of Appendix–I species from the wild unless the importer demonstrates that (1) the importer has been unable to obtain suitable captive-bred specimens of the same species; (2) the importer could not use another species, not listed in Appendix I, for the proposed purpose; and (3) ''the proposed purpose could not be achieved through alternative means.'' The commenter stated the current regulations do not require an applicant to demonstrate that it has exhausted alternatives before importing an African elephant.

Response: We disagree with the assertions made by the commenter. All CITES requirements remain in effect and are not affected by this rule. Our CITES implementing regulations are found in 50 CFR part 23. A finding of ''not for primarily commercial purposes'' will continue to be required for Appendix–I imports in accordance with 50 CFR 23.62. In addition, this rule provides clear requirements for consideration of relevant alternatives prior to the import of wild-sourced African elephants.

(54) Comment: A commenter stated the proposed regulations allow unwarranted deference to claims that the exhibition of animals promotes conservation through education. The commenter recommended that the Service require zoos to submit evidence that the exhibits result in measurable gain in the understanding of the animal and the threats it faces and contribute to actions aimed at conserving the species.

Response: Under 50 CFR 17.32(a), we require a robust review of ESA import permit applications for the purposes of zoological exhibition and educational purposes, including an analysis of educational materials and programming to determine if the proposed import meets the issuance criteria under 50 CFR 17.32(a)(2).

(55) Comment: Several commenters suggested the regulatory revisions in the proposed rule are not sufficient in reducing the harm that African elephants suffer as a result of their continued importation and exportation throughout the global market. They opined that legal hunting is not a sufficient way to increase the survival of the species. Because of the practices of wildlife traffickers and forged import documents, the commenters did not believe it is feasible for the Service to ensure that elephants are legally sourced. Due to these factors, they requested a complete ban on sport-hunted trophies and the importation of live African elephants.

Response: See response to Comment 13.

(56) Comment: Several commenters expressed concern that the standards in the proposed rule regarding the annual certification of range countries will be overly burdensome and impossible to achieve and are vague and unreasonable. They are also concerned that the Service does not have the capability to collect, compile, and file the information, leading to less conservation funding for the range countries.

Response: See responses to Comments 35 and 45.

(57) Comment: Several commenters expressed concern over the negative potential impacts of the proposed rule on hunting revenue and therefore on elephant conservation. Regulatory barriers would lead to a prohibition on trophy hunting or otherwise make it impossible for range countries to comply, disincentivizing elephant hunting and ultimately generating less revenue from hunting. Hunting revenue is crucial to the operating budgets of wildlife authorities in range countries. The proportion of illegally killed elephants is higher in parts of Africa where hunting is not a part of the conservation regime, which is linked to the money generated by hunting that is put back into anti-poaching efforts. Regulatory barriers to hunting will therefore reduce their benefits to conservation, such as habitat protection, anti-poaching, and community support.

Response: As previously noted, well-managed trophy hunting can benefit conservation by generating funds to be used for conservation, including for habitat protection, population monitoring, wildlife management

programs, and law enforcement efforts. We are also aware that not all trophy hunting is part of a well-managed, well-run program, and we evaluate import of sport-hunted trophies carefully to ensure that all legal requirements under 50 CFR 17.32(a)(2) are met before allowing import. One purpose of this rule is to clarify the criteria used when making these evaluations and to streamline the gathering of necessary information to improve review efficiency.

(58) Comment: A commenter stated that requiring hunting revenues add to, and not simply substitute for, other existing funding for conservation is confusing and contradictory, considering that some areas are funded exclusively by hunting revenue.

Response: As previously noted, well-managed trophy hunting can benefit conservation by generating funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, and law enforcement efforts. The example provided, of conservation of land that is utilized for hunting that can be viably protected only via hunting, is an example of hunting revenues adding to and not simply substituting for other existing funding for conservation.

(59) Comment: Several commenters expressed concern about the way funds are to be measured and monitored under the proposed rule. One commenter stated that the current requirement to provide information on how funds derived from hunting license or trophy fees will be used is imprecise and infringes on individual privacy. Another commenter noted that contributions to conservation are not typically species-specific and asked how ''African elephant conservation activities,'' to which funds derived from hunting are to be applied, are defined in the rule. The commenters stated that license fees in Africa are not well-managed and suggest that we instead consider that the following information: (1) If the community's wildlife is being sold for a fair market price; (2) if this money is reaching the community; and (3) when this money reaches the community, if it is governed transparently, democratically, and effectively. They suggested that systems that monitor the performance of the private sector in a standardized way would benefit communities.

Response: This rule clarifies the enhancement criteria, including reporting on the revenues generated from the activities, and supports the evaluation of whether the proposed activity will contribute positively toward the recovery of the species in the wild. The import of each specimen must meet this standard. Accordingly, before approving the import, we use the enhancement-criteria information, including the information on funds, to ensure that standards are met. We acknowledge that wildlife management systems vary among African elephant range countries and, as a result, the way in which funds may be used to support elephant conservation may differ. We are not advocating for a specific system. This rule instead clarifies that we consider this information when making a determination related to enhancement.

(60) Comment: Several commenters emphasized the importance of hunting revenues going back to community members to decide how to use. One commenter provided an example of a system at the community level to evaluate the ''fair price for wildlife'' that relied on voluntary access to community income statements and annual quotas. They stated that the long-term political and economic sustainability of African wildlife directly relates to community-based natural resources management governance principles and ensuring that high-performing communities get access to better prices or that a smoother importation process might help incentivize this process. They stated that the data requirements listed in the proposed rule reflect the needs of the private sector, but not the community. They suggested measuring revenue using a system that includes multiple elements: financial, total economic value, capital investment, ecological health and productivity, utilization and sustainability, resource protection, community development, problem-animal reporting and management, and impact monitoring. Other commenters suggested that funds be primarily used for elephant conservation on private land and within community conservancies, as is the case in Tanzania, and that the Service should clarify that revenue to communities and general treasuries of governments can constitute enhancement.

Response: Please see the response to the previous comment (Comment 59).

(61) Comment: A commenter stated that combining transparency with an educated marketplace would help American hunters spend their money where hunting revenues genuinely benefit and empower communities. The commenter suggested that the following data be collected: how much is paid for the quota relative to its size/value; how much is paid to individuals/shareholders in the community; whether all individuals participate in revenue allocation processes; how individuals allocate money back to public-good functions (*i.e.,* what do they pay in taxes and how are these taxes used); and how well these finances are accounted for and managed.

Response: If available, we will consider this information when conducting an enhancement evaluation. See also response to Comment 59.

(62) Comment: A commenter suggested that the Service require range countries to provide a detailed accounting of how all derived funds are used along with an explanation of how these funds produce a net positive impact on the species' conservation. The commenter suggested that the Service require transparent reporting of funds and evidence that those funds make biologically significant advances to elephant conservation and stated that it is important for funds to be put toward infrastructure and educational programs that promote human-elephant coexistence.

Response: If available, we will consider this information when conducting an enhancement evaluation. See also response to Comment 59.

Changes From the Proposed Rule to the Final Rule

All changes from the proposed rule (87 FR 68975, November 17, 2022) to this final rule were discussed above in our responses to comments received. We have considered substantive comments and data provided. In summary, we have made a few important changes and clarifications in the final rule:

- We finalized the CITES National Legislation Project Category One requirement to take effect after CITES CoP20 (anticipated to be held in 2025). We made this change to give range countries additional time to comply with this requirement and to ensure the requirement is supportive of countries making efforts to comply.
- We have added language to proposed paragraph (e)(11) to clarify that the CITES National Legislation Project Category One requirement will allow for limited exceptions for import of African elephant parts and products other than ivory for law enforcement purposes and genuine scientific purposes. These narrow exceptions parallel and will follow the same requirements as the exceptions for law enforcement purposes and for genuine scientific purposes currently established for the import of African elephant ivory (50 CFR 17.40(e)(7) and (e)(8)).
- We have revised the language in proposed paragraph (e)(10)(iv) to clarify that each special permit to transfer an

elephant must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person *or location* without a special purpose permit. Adding the requirement that the permittee be authorized by permit to obtain a new permit when the animal is transferred to another location (*e.g.,* to a facility located on different premises, or pursuant to a temporary loan or lease) adds clarity to the permit's condition.

- We have revised the language in new paragraph (e)(6)(ii) to clarify that any new requirements for imports of sport-hunted trophies will be applied prospectively and not impact sport-hunted trophy applications where the hunt occurred before the effective date of this rule. We have amended the final rule accordingly, so the new regulations at 50 CFR 17.40(e)(6)(ii) pertaining to import of sport-hunted trophies will apply where the hunt date is on, or after, the effective date of this rule.
- We have revised the enhancement criterion that requires African elephant populations in a range country to be stable or increasing for import of live African elephants and sport-hunted trophies. We have replaced the term ''stable or increasing'' with ''biologically sustainable.'' The term ''biologically sustainable'' gives us flexibility when making our enhancement determinations and allows us to consider circumstances where specific offtake is biologically sustainable, even if the overall population in the range country is not currently assessed as stable or increasing. This change has been reflected in paragraphs (e)(6)(ii)(A) and (e)(10)(ii)(A) of this final rule.
- We have adjusted the enhancement criterion that outlines how funds derived from live elephant and sport-hunted trophy imports should be applied toward African elephant conservation. While achieving meaningful enhancement will often require that the top use of funds derived from activities with elephants be directed to elephant conservation, we are providing more flexibility for applicants and range countries to demonstrate the significance of the amount of funds put toward African elephant conservation when determining whether the activities enhance the survival of the species in the wild. We have replaced the word ''primarily'' with ''significantly'' as that term better represents the requirement that funding be provided in an amount that will lead to meaningfully enhancing the survival of African elephants in the wild. We have amended proposed paragraphs (e)(6)(ii)(G) and (e)(10)(ii)(H) to reflect this change.
- We have removed the enhancement criterion that requires 100 percent of African elephant meat from a hunt to be donated to local communities. We recognize there are situations where there are no inhabitants near a hunt site, or other circumstances that would make the requirement infeasible. We also recognize that this form of support to local communities, if applicable, may also be addressed as a method used to prevent or mitigate human-elephant conflict under paragraph (e)(6)(ii)(G)(*7*). Accordingly, we have removed proposed paragraph (e)(6)(ii)(G)(*8*) from this final rule.
- We have revised the language in new paragraphs (e)(6)(ii) and (e)(10)(ii) to clarify that a range country must provide the Service with a properly documented and verifiable certification dated no earlier than 1 year prior to the date the elephant is taken or removed from the wild, as opposed to when the permit is processed. We have made this clarification to better ensure the information provided by a range country is relevant to the time-period that the activity takes place. This will help ensure that we are using relevant data to determine if enhancement has been met for the species in the wild.

Regulatory Changes

The rule portion of this document sets forth the new regulatory provisions that have been added to 50 CFR 17.40(e). For reasons explained below, the rule text also includes some previous regulatory text that we did not change. Public comments were accepted only on the proposed new regulatory text in the proposed rule and on paragraph (e)(2) as described in the draft environmental assessment (see the National Environmental Policy Act section below in the preamble) and not on any other regulatory provisions in paragraph (e).

In paragraph (e)(1), which sets forth definitions used in the regulations in paragraph (e), we added a definition for ''range country.'' We also reformatted the paragraph so that it follows current style requirements for the Code of Federal Regulations. Thus, we divided the current single paragraph into an indented list, and we have set forth the new term and definition in alphabetic order in a list of the current terms and definitions. However, we did not make changes to the current terms and definitions in that paragraph.

In paragraph (e)(2), we removed both references, which appear in the paragraph heading and the first sentence, to live African elephants because we included regulatory provisions regarding live African elephants in a new paragraph (e)(10) as described below.

The primary new regulatory provisions in this final rule, as described earlier in this document, are as follows: In a new paragraph (e)(6)(ii), we added regulations pertaining to making enhancement determinations that are required by the previous section 4(d) rule for the importation of African elephant sport-hunted trophies. In a new paragraph (e)(10), we added regulatory provisions regarding activities with live African elephants. Finally, we incorporated the CITES National Legislation Project designations into the requirements for certain imports in a new paragraph (e)(11) and, consequently, we added cross-references to paragraph (e)(11) in paragraphs (e)(2), (e)(6)(i)(D), and (e)(10)(i).

Required Determinations

Regulatory Planning and Review: Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant. The Service has assessed the expected direction of change in benefits, costs, and transfers from this rulemaking and has evaluated alternatives in the environmental assessment and economic analysis (see **ADDRESSES**).

Executive Order (E.O.) 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

The Service has finalized an environmental assessment, as part of our review under the National Environmental Policy Act (NEPA), which is available for the public (see the section below in the preamble pertaining to NEPA). The final rule revises the current section 4(d) rule that

regulates trade of African elephants (*Loxodonta africana*). This final rule revises the regulations at 50 CFR 17.40(e) more strictly to control U.S. trade in live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies. This final rule does not affect the regulations for African elephant ivory.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard for industries described in the North American Industry Classification System (NAICS). To assess the effects of the final rule on small entities, we focus on entities (zoos and traveling exhibits) that are equipped to care for and feed a captive-held elephant, entities that sell parts and products (furniture, luggage and leather goods, gifts and souvenirs, and used merchandise) other than ivory and sport-hunted trophies, and entities that provide guide services for trophy hunting. The industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards. As shown in table 1, most businesses within these industries are small entities (U.S. Census). The following analysis is supported by the economic analysis in the environmental assessment.

TABLE 1—POTENTIAL INDUSTRIES AFFECTED BY THE FINAL RULE TO REVISE THE REGULATIONS UNDER SECTION 4(d) OF THE ESA FOR AFRICAN ELEPHANTS

Industry	NAICS code	Size standards in millions of dollars	Number of businesses	Number of small businesses
Zoos and botanical gardens	712130	$30.0	646	531
Traveling exhibits	712110	30.0	5,140	4,621
Furniture stores	442110	22.0	23,628	20,945
Luggage and leather goods stores	448320	30.0	988	615
Gift, novelty, and souvenir stores	453220	8.0	21,687	16,398
Used merchandise stores	453310	8.0	20,301	15,407
All other amusement and recreation industries (includes hunting guide services)	713390	8.0	18,405	7,629

Under the final rule, entities (zoos and traveling exhibits) will potentially be impacted if they import/export a live African elephant or transfer/move an African elephant after import. The environmental assessment and economic analysis show that total industry imports could decrease by, at most, one shipment annually if the importer does not choose to substitute a Category One designated country.

Under the final rule, entities that sell parts and products (furniture, luggage and leather goods, gifts and souvenirs, and used merchandise) other than ivory and sport-hunted trophies will potentially be impacted if they import their products from a non-Category One country and do not choose to substitute a Category One country. The number of businesses importing parts and products other than ivory and sport-hunted trophies is unknown. However, we know that shipments from non-Category One countries averaged 60 shipments annually from 2010 to 2019. Assuming that each shipment represents one small business, the rule will affect 0.1 percent of these small businesses (including furniture, luggage and leather goods, gifts, and used merchandise stores). Due to the highly specific segments of consumers who want these types of products, we expect a small number of small businesses to be impacted under the final rule.

Under the final rule, U.S. entities that provide guide services for hunting African elephants will potentially be impacted if they provide these services in a non-Category One designated country and do not choose to or cannot provide those services in a Category One designated country. The number of U.S. businesses providing guide services for hunting African elephants is unknown. Due to the niche market for this service, we expect few small businesses to be impacted under the final rule.

In addition to determining whether a substantial number of small entities are likely to be affected by this final rule, we must also determine whether the final rule is anticipated to have a significant economic effect on those small entities. As noted in the environmental assessment and economic analysis, for businesses importing/exporting live African elephants (zoos and travelling exhibits), the incremental changes of submitting an additional form (with a $100 permit application processing fee) or a decrease of at most one shipment out of total industry imports is expected to be negligible. Therefore, the final rule will not have a significant economic effect on zoos and traveling exhibits. For all industries, it is possible that some importers will substitute a Category One designated country, and the impacts of the final rule will be reduced.

Therefore, we certify that this final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Congressional Review Act: This final rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This final rule will not significantly or uniquely affect small governments. A small government agency plan is not required. The final rule imposes no unfunded mandates. Therefore, this final rule will have no effect on small governments' responsibilities.

b. This final rule will not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this final rule does not have significant takings implications. While certain activities that were previously unregulated will now be regulated, possession will remain unregulated, except with regard to illegally taken or illegally traded specimens. A takings implication assessment is not required.

Federalism: The revisions to part 17 do not contain significant federalism implications. A federalism summary impact statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: This final rule contains new information collections requiring approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We will request OMB approval of the new reporting and recordkeeping requirements identified below:

(1) *Permit Application (Form 3–200–37h), ''Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA)'' 50 CFR 17.40*—Form 3–200–37h will cover activities involving the interstate commerce, transfer, export, or foreign commerce of live African elephants. The application form applies to both wild-sourced and captive-bred live African elephants. The information provided in the application form will be used to determine whether a permit can be issued to the applicant under the relevant Federal regulations pertaining to the requested activity.

We will develop this application form in the Service's ePermits system to reduce public burden. Upon request, we will provide the public with paper-based (or PDF) versions if they do not have reliable access to the internet.

Information to be collected from domestic entities (*i.e.,* individuals, private sector, State/local/Tribal governments) is listed below, noting applicants may need to provide information from the foreign entity as part of their application submission:

- Standardized identifier information required in 50 CFR 13.12.
- Name and address where the permit is to be mailed, if different from physical address.
- Name, phone number, and email of individual(s) for the Service to contact with questions.
- Whether the applicant or any of the owners of the business (if applying as a business, corporation, or institution) have been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed; been convicted, or entered a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act; forfeited collateral; or are currently under charges for any violation of the laws.
- Type of activity requested (interstate commerce, transfer, export, or foreign commerce).
- The current location of the animal(s) (if different from the physical address).
- Name and physical address of the recipient of the specimen.
- For each animal involved in the export/transport, the applicant must provide the following information:

—Scientific name (genus, species, and if applicable, subspecies);
—Common name;
—Approximate birth date (mm/dd/yyyy);
—Wild or captive-bred;
—Quantity;
—Sex (males, females, *e.g.,* 10, 2); and
—Permanent markings or identification (microchip #, leg band #, tattoos, studbook #, etc.).

- Information regarding source of specimen(s).
- A description and justification for the requested activity.
- Information regarding technical expertise and facilities.
- Information confirming that the receiving facility meets the CITES ''suitably equipped to house and care for'' requirements.
- The transportation/shipment condition of the live animals.

Modifications to Form 3–200–37h: The organization of the application was updated to clarify the information required from the applicant. To ensure that applicants are asked to respond only to questions which pertain to the specific activity they are requesting, the application was divided into multiple ''Parts''. This reorganization will clarify which questions are required and reduce the overall burden to the applicant. Similarly, guidance text was altered in an attempt to clarify the activities covered under the application and the requirements for submission. Several questions were also combined or removed in order to reduce redundancy and to decrease the overall burden on the applicant. We believe these edits will make the form clearer and greatly reduce the burden for all applicants that will be filling out the form.

(2) *Range Country Certification Requirements*—As described above, the final rule establishes an annual certification requirement for range countries to provide the Service with information about the management and status of African elephants and their habitat, within their country. This is not part of the application form itself, but a separate certification document/report/letter from the foreign country's government. The foreign government may provide the certification and information directly to the Service, or the applicant may provide it to the Service. The certification and information will be subject to verification by the Service.

This annual certification from the range country will be kept on file and made available to the public. Without this properly documented and verifiable annual certification, the Service would be unable to issue the requested import permit. This annual certification is specifically for requests to import live, wild-sourced African elephants or African elephant sport-hunted trophies.

Information to be collected from the range country for the import of live, wild-sourced elephants includes specific information on whether family units were kept intact and whether any of the animals collected are pregnant. Alternatively, information collected for the import of sport-hunted trophies includes specific information on the use of the meat of the animal.

(3) *Recordkeeping Requirements*—Completion of the new application form requires the retention of records regarding details on the identification of the elephants, as well as regarding their acquisition, original source, and subsequent transfers, as well as records documenting staff technical expertise and facility information for the species.

(4) *Permit Fee*—The new Form 3–200–37h will impose a new nonhour burden cost of $100 per application. Amendments will incur a $50 processing fee.

All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits, such as the name of the applicant and the applicant's address, telephone numbers, tax identification number, email address, and website address, if applicable. Standardization of general information common to the application forms makes the filing of applications easier for the public, as well as expediting our review of applications.

The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Respondents submit application forms periodically as needed; submission of reports is generally on an annual basis, or as identified conditionally as part of an issued permit. We examined applications in this collection, focusing on questions frequently misinterpreted or not addressed by applicants. We have made clarifications to many of our applications to make it easier for the applicant to know what information we need and to accommodate future electronic permitting. Use of these forms:

- Reduces burden on applicants.
- Improves customer service.
- Allows us to process applications and finalize reviews quickly.

A copy of the Form 3–200–37h, ''*Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA)*'' is available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Requirements for African Elephants.

OMB Control Number: 1018–0186.

Form Numbers: FWS Form 3–200–37h.

Type of Review: New.

Respondents/Affected Public: Individuals (including hunters); private sector (including biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, antique dealers, exotic pet industry, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers); State, local, Tribal, and Federal governments; and foreign governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion or annually, depending on activity.

Total Estimated Annual Nonhour Burden Cost: $2,800 for costs associated with application processing fees, which range from $0 to $250. State, local, Tribal, and Federal government agencies and those acting on their behalf are exempt from processing fees.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours *
Application—Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	6	6
Private Sector	10	1	10	6	60
Government	5	1	5	6	30
ePermits Application—Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	5.25	5
Private Sector	10	1	10	5.25	53
Government	5	1	5	5.25	26
Amendment—Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	4	4
Private Sector	5	1	5	4	20
Government	3	1	3	4	12
ePermits Amendment—Interstate Commerce, Transfer, Export, or Foreign Commerce of Live African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	3.5	4
Private Sector	5	1	5	3.5	18
Government	3	1	3	3.5	11
Range Country Certification Requirements 50 CFR 17.40(e) NEW					
Foreign Government	37	1	37	10	370
Totals	87	.....	87	.....	619

* Rounded.

On November 17, 2022, we published in the **Federal Register** (87 FR 68975) a proposed rule (RIN 1018–BG66), which announced our intention to request OMB approval of the information collections identified in the rule. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on January 17, 2023. Summaries of comments addressing the information collections contained in this rule, as well as the agency response to those comments, can be found in the ''Proposed Rule, Public Hearing, and Public Comments Received'' section of this rule, as well as in the information collection request submitted to OMB on the *RegInfo.gov* website (*https://www.reginfo.gov/public/*).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** 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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov*. Please reference OMB Control Number 1018–0186 in the subject line of your comments.

National Environmental Policy Act (NEPA): This final rule was analyzed under the criteria of the National Environmental Policy Act, the Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR part 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because we conducted an environmental assessment and reached a finding of no significant impact. This finding and the accompanying environmental assessment are available online at *https://www.regulations.gov* at Docket Number FWS–HQ–IA–2021–0099.

Government-to-Government Relationship with Tribes: The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this final rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required. Individual Tribal members must meet the same regulatory requirements as other individuals who trade in African elephants, including African elephant parts and products.

Energy Supply, Distribution, or Use: Executive Order 13211 pertains to regulations that significantly affect energy supply, distribution, or use. This final rule will revise the current regulations in 50 CFR part 17 regarding trade in African elephants and African elephant parts and products. This final rule will not significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.40(e) by:

■ a. In the introductory text, removing the reference ''paragraphs (e)(2) through (9)'' and adding in its place the reference ''paragraphs (e)(2) through (11)'';

■ b. Revising paragraphs (e)(1), (e)(2), and (e)(6)(i)(D);

■ c. Redesignating paragraphs (e)(6)(ii) and (iii) as paragraphs (e)(6)(iii) and (iv) and adding a new paragraph (e)(6)(ii); and

■ d. Adding paragraphs (e)(10) and (e)(11).

The revisions and additions read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(e) * * *

(1) *Definitions.* In this paragraph (e), the following terms have these meanings:

Antique means any item that meets all four criteria under section 10(h) of the Endangered Species Act (16 U.S.C. 1539(h)).

Ivory means any African elephant tusk and any piece of an African elephant tusk.

Range country means a country that exercises jurisdiction over part of the natural geographic range of the African elephant including the following: Angola; Benin; Botswana; Burkina Faso; Cameroon; Central African Republic; Chad; Congo, Republic of the; Congo, The Democratic Republic of the; Côte d'Ivoire; Equatorial Guinea; Eritrea; Eswatini; Ethiopia; Gabon; Ghana; Guinea; Guinea-Bissau; Kenya; Liberia; Malawi; Mali; Mozambique; Namibia; Niger; Nigeria; Rwanda; Senegal; Sierra Leone; Somalia; South Africa; South Sudan; Tanzania, United Republic of; Togo; Uganda; Zambia; and Zimbabwe.

Raw ivory means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

Worked ivory means any African elephant tusk, and any piece thereof, that is not raw ivory.

(2) *Parts and products other than ivory and sport-hunted trophies.* African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in

interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

* * * * *

(6) * * *

(i) * * *

(D) The requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met; and

* * * * *

(ii) For African elephant sport-hunted trophies taken on or after May 1, 2024, to make an enhancement determination under paragraph (e)(6)(i)(B) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the elephant is taken that:

(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain sport hunting at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations.

(G) Funds derived from the involved sport hunting are applied significantly toward African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range country governments to produce or strengthen regional and national elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor elephant populations;

(5) Conducting elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants; and

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human–elephant conflict.

* * * * *

(10) *Live African elephants.* (i) Live African elephants may be imported into the United States, provided the Service determines that the activity will enhance the survival of the species, the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), the animal is accompanied by a threatened species permit issued under § 17.32, and the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

(ii) To make an enhancement determination for the import of wild-sourced live African elephants under paragraph (e)(10)(i) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the elephant is removed from the wild that:

(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved live animals have in fact been legally taken from the specified populations and family units were kept intact to the maximum extent practicable.

(G) Regulating authorities can ensure that no live African elephants to be imported are pregnant.

(H) Funds derived from the import are applied significantly toward African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of African elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range country governments to produce or strengthen regional and national African elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor African elephant populations;

(5) Conducting African elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants; and

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human–elephant conflict.

(I) The government of the range country first considers any live elephants that it approves for export for both in situ conservation programs and for transportation to other locations to augment extant wild populations or reintroduce elephants to extirpated ranges.

(iii) Live African elephants may be sold or offered for sale in interstate commerce, and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity, provided the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), and a special purpose permit is issued under § 17.32 or a captive-bred wildlife registration is issued under § 17.21(g).

(iv) Each permit issued to authorize activity with a live African elephant under 50 CFR parts 17 or 23 must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person or location without a special purpose permit issued under § 17.32. Each special purpose permit for a live African elephant must also include the same condition. Each special purpose permit issued for a live African elephant will require a finding by the Service that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter).

(11) *CITES National Legislation Project and African elephants.* On or

after January 1, 2026, live African elephants, sport-hunted trophies, and parts or products other than ivory and sport-hunted trophies may not be imported into the United States under the exceptions for importation provided in § 17.32 or paragraphs (e)(2), (e)(6), or (e)(10) of this section except when:

(i) All trade in the specimen has been and is accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (see § 23.7 of this chapter and *http://www.cites.org*); or

(ii) When importation under paragraph (e)(2) of this section is for law enforcement purposes and meets the requirements as set forth at paragraph (e)(7) of this section for the import of ivory or is for genuine scientific purposes and meets the requirements as set forth at paragraph (e)(8) of this section for the import of ivory.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024–06417 Filed 3–29–24; 8:45 am]

BILLING CODE 4333–15–P

FEDERAL REGISTER

Vol. 89 Monday,
No. 63 April 1, 2024

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1903
Worker Walkaround Representative Designation Process; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1903

[Docket No. OSHA–2023–0008]

RIN 1218–AD45

Worker Walkaround Representative Designation Process

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

ACTION: Final rule.

SUMMARY: In this final rule, OSHA is amending its Representatives of Employers and Employees regulation to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party; such third-party employee representative(s) may accompany the OSHA Compliance Safety and Health Officer (CSHO) when, in the judgment of the CSHO, good cause has been shown why they are reasonably necessary to aid in the inspection. In the final rule, OSHA also clarified that a third party may be reasonably necessary because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills. OSHA concluded that these clarifications aid OSHA's workplace inspections by better enabling employees to select representative(s) of their choice to accompany the CSHO during a physical workplace inspection. Employee representation during the inspection is critically important to ensuring OSHA obtains the necessary information about worksite conditions and hazards.

DATES:

Effective date: This final rule is effective on May 31, 2024.

Docket: To read or download comments or other information in the docket, go to Docket No. OSHA–2023–0008 at *https://www.regulations.gov.* All comments and submissions are listed in the *https://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, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TDY number 877–889–5627) for assistance in locating docket submissions.

When citing exhibits in the docket in this final rule, OSHA includes the term ''Document ID'' followed by the last four digits of the Document ID number. Citations also include, if applicable, page numbers (designated ''p.''), and in a limited number of cases a footnote number (designated ''Fn.''). In a citation that contains two or more Document ID numbers, the Document ID numbers are separated by semi-colons (*e.g.,* 0001; 0002).

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Copies of this ***Federal Register*** *notice and news releases:* Electronic copies of these documents are available at OSHA's web page at *https://www.osha.gov.*

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I. Executive Summary

Since the Occupational Safety and Health Act of 1970 (OSH Act or Act) was passed in 1970, section 8(e) of the OSH Act has required that, subject to regulations issued by the Secretary of Labor (via OSHA), a representative of the employer and a representative authorized by employees ''shall'' each have the opportunity to accompany OSHA during the physical inspection of the workplace (*i.e.,* ''the walkaround'') for the purpose of aiding OSHA's inspection. One of section 8(e)'s implementing regulations, at 29 CFR 1903.8(c), provided that a representative authorized by employees ''shall be an employee(s) of the employer.'' However, that regulation also created an exception for ''a third party who is not an employee of the employer'' when, ''in the judgment of the Compliance Safety and Health Officer, good cause has been shown'' why the third party was ''reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. . . .'' 29 CFR 1903.8(c) (1971). The regulation pointed to two non-exhaustive examples—a safety engineer and an industrial hygienist.

While OSHA has long permitted employee representatives to be third parties pursuant to 29 CFR 1903.8(c), in

2017, a district court concluded that interpretation was not consistent with the regulation. Because the first sentence of 1903.8(c) explicitly stated that employee representatives ''shall be employees of the employer,'' it rejected OSHA's interpretation as ''flatly contradict[ing]'' the regulation. *Nat'l Fed'n of Indep. Bus.* v. *Dougherty,* No. 3:16–CV–2568–D, 2017 WL 1194666, at *11 (N.D. Tex. Feb. 3, 2017) (*NFIB* v. *Dougherty*). However, the district court also recognized that OSHA's interpretation that third parties could be employee representatives was a ''persuasive and valid'' reading of section 8(e) of the OSH Act. Id. at 12. The court concluded that ''the Act merely provides that the employee's representative must be authorized by the employees, not that the representative must also be an employee of the employer.'' Id.

This final rule has a narrow purpose and makes two changes to 1903.8(c). First, in response to the district court's decision, it clarifies that consistent with Section 8(e) of the OSH Act, employee representatives may either be an employee of the employer or a third party. Second, consistent with OSHA's longstanding practice, it clarifies that a third-party representative authorized by employees may have a variety of skills, knowledge, or experience that could aid the CSHO's inspection. The latter revision clarifies that employees' options for third-party representation during OSHA inspections are not limited to only those individuals with skills and knowledge similar to that of the two examples (industrial hygienist or safety engineer) provided in the prior regulatory text. OSHA has retained the longstanding requirement in 1903.8(c) that third-party representatives may accompany the CSHO when good cause has been shown why they are reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.

These revisions to 1903.8(c) do not change the CSHO's authority to determine whether good cause has been shown why an individual is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. See 29 CFR 1903.8(b). The revisions also do not affect other provisions of section 1903.8, such as the CSHO's authority to deny the right of accompaniment to any individual whose conduct interferes with a fair and orderly inspection (29 CFR 1903.8(d)), the requirement that the conduct of inspections preclude unreasonable disruption of the operations of the employer's establishment (29 CFR 1903.7(d)), or the employer's right to limit entry of employee authorized representatives into areas of the workplace that contain trade secrets (29 CFR 1903.9(d)).

As discussed below, OSHA's revisions will better align the language in 1903.8(c) with the language and purpose in section 8(e) of the OSH Act, 29 U.S.C. 657(e). By clarifying who can serve as employees' walkaround representative, the rule facilitates improved employee representation during OSHA inspections. Employee representation is vital to thorough and effective OSHA inspections, and OSHA finds these changes will improve the effectiveness of OSHA inspections and benefit employees' health and safety. OSHA determined that the rule appropriately recognizes employees' statutory right to a walkaround representative and OSHA's need for thorough and effective inspections while still protecting employers' privacy and property interests. Additionally, OSHA has concluded that this rule will not increase employers' costs or compliance burdens.

II. Background

A. The OSH Act and OSHA's Inspection Authority

The OSH Act was enacted ''to assure so far as possible every working [person] in the Nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)). To effectuate the Act's purpose, Congress authorized the Secretary of Labor to promulgate occupational safety and health standards (see 29 U.S.C. 655). The Act also grants broad authority to the Secretary to promulgate rules and regulations related to inspections, investigations, and recordkeeping (see 29 U.S.C. 657).

Section 8 of the OSH Act states that OSHA's inspection authority is essential to carrying out the Act's purposes and provides that employers must give OSHA access to inspect worksites ''without delay'' (29 U.S.C. 657(a)). Section 8(e) of the Act provides specifically that ''[s]ubject to regulations issued by the Secretary, a representative of the employer and a representative authorized by [its] employees shall be given an opportunity to accompany [the CSHO] for the purpose of aiding such inspection'' (29 U.S.C. 657(e)). Section 8(g) further authorizes the Secretary to promulgate such rules and regulations as the agency deems necessary to carry out the agency's responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment (29 U.S.C. 657(g)).

B. Regulatory History and Interpretive Guidance

On May 5, 1971, OSHA proposed rules and general policies for the enforcement of the inspection, citation, and penalty provisions of the OSH Act. (36 FR 8376, May 5, 1971). OSHA subsequently issued regulations for inspections, citations, and proposed penalties at 29 CFR part 1903. (36 FR 17850, Sept. 4, 1971).

The OSH Act and 29 CFR part 1903 provide CSHOs with significant authority to conduct OSHA's inspections. Part 1903 contains specific provisions that describe the CSHO's authority and role in carrying out inspections under the OSH Act. For example, the CSHO is in charge of conducting inspections and interviewing individuals and has authority to permit additional employer representatives and representative(s) authorized by employees to accompany the CSHO during the physical inspection of the workplace. See 29 CFR 1903.8(a). In addition, the CSHO has the authority to resolve any disputes about who the employer and employee representatives are and to deny any person the right of accompaniment if their conduct interferes with a fair and orderly inspection. See 29 CFR 1903.8(b), (d). The CSHO also has authority to use various reasonable investigative methods and techniques, such as taking photographs, obtaining environmental samples, and questioning individuals while carrying out their inspection. 29 CFR 1903.7(b); see also 1903.3(a).

Section 1903.8(c), the subject of this rulemaking, authorizes the CSHO to determine whether third-party representatives would aid OSHA's physical inspection of a workplace. Prior to this rulemaking, section 1903.8(c) provided: ''The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.'' 29 CFR 1903.8(c) (1971). This paragraph, which primarily addresses employer and employee representatives during inspections, had not been revised since it was adopted in 1971.

Since issuing its inspection-related regulations, OSHA has provided guidance on its interpretation of section 1903.8(c) and the meaning of ''representative authorized by employees'' for purposes of the OSHA walkaround inspection. For example, on March 7, 2003, OSHA issued a letter of interpretation to Mr. Milan Racic (Racic letter), a health and safety specialist with the International Brotherhood of Boilermakers (Document ID 0002). Mr. Racic asked whether a union representative who files a complaint on behalf of a single worker could then also act as a walkaround inspection representative in a workplace that has no labor agreement or certified bargaining agent (Document ID 0002). In its response letter, OSHA stated that there was no ''provision for a walkaround representative who has filed a complaint on behalf of an employee of the workplace'' (Document ID 0002).

On February 21, 2013, OSHA issued a letter of interpretation to Mr. Steve Sallman (Sallman letter) of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (Document ID 0003). Mr. Sallman asked whether workers at a worksite without a collective bargaining agreement could designate a person affiliated with a union or a community organization to act on their behalf as a walkaround representative. OSHA responded in the affirmative, explaining that such person could act on behalf of employees as long as they had been authorized by employees to serve as their representative.

OSHA further explained that the right is qualified by 29 CFR 1903.8, which gives CSHOs the authority to determine who can participate in an inspection. OSHA noted that while 1903.8(c) acknowledged that most employee representatives will be employees of the employer being inspected, the regulation also ''explicitly allows walkaround participation by an employee representative who is not an employee of the employer when, in the judgment of the OSHA compliance officer, such representative is 'reasonably necessary to the conduct of an effective and thorough physical inspection' '' (Document ID 0003). OSHA explained that such representatives are reasonably necessary when they will make a positive contribution to a thorough and effective inspection (Document ID 0003).

OSHA gave several examples of how an authorized employee representative who was not an employee of the employer could make an important contribution to the inspection, noting that the representative might have a particular skillset or experience evaluating similar working conditions in a different facility. OSHA also highlighted the usefulness to workers and to the CSHO of an employee representative who is bilingual or multilingual to better facilitate communication between employees and the CSHO during an inspection.

Additionally, OSHA noted that the 2003 Racic letter had inadvertently created confusion among the regulated community regarding OSHA's interpretation of an authorized employee representative for walkaround inspection purposes. OSHA explained that the Racic letter merely stated that a non-employee who files a complaint does not necessarily have a right to participate in an inspection arising out of that complaint, but that it did not address the rights of workers without a certified or recognized collective bargaining agent to have a representative of their own choosing participate in an inspection. OSHA withdrew the Racic letter to eliminate any confusion and then included its interpretation of 29 CFR 1903.8(c) as to who could serve as an authorized employee representative when it updated its Field Operations Manual (FOM) CPL 02–00–159 on October 1, 2015 (Document ID 0004). The FOM explained that ''[i]t is OSHA's view that representatives are 'reasonably necessary', when they make a positive contribution to a thorough and effective inspection'' and recognized that there may be cases in which workers without a certified or recognized bargaining agent would authorize a third party to represent the workers on the inspection (Document ID 0004). OSHA noted that ''[t]he purpose of a walkaround representative is to assist the inspection by helping the compliance officer receive valuable health and safety information from workers who may not be able or willing to provide such information absent the third-party participants'' (Document ID 0004)

C. Litigation and Subsequent Agency Action

In September 2016, several years after OSHA issued the Sallman letter, the National Federation of Independent Business (NFIB) filed a suit in the district court for the Northern District of Texas challenging the Sallman letter, arguing it should have been subject to notice and comment rulemaking and that it conflicted with OSHA's regulations and exceeded OSHA's statutory authority. *NFIB* v. *Dougherty,* 2017 WL 1194666. On February 3, 2017, the district court concluded that OSHA's interpretation as stated in the Sallman letter was not consistent with 29 CFR 1903.8(c) and such a change to a regulation could not be made without notice and comment rulemaking. Id. at *11. The district court held that the letter ''flatly contradicts a prior legislative rule as to whether the employee representative must himself be an employee.'' Id.

Nevertheless, the court rejected NFIB's claim that the Sallman letter conflicted with the OSH Act, finding that OSHA's Sallman letter of interpretation was ''a persuasive and valid construction of the Act.'' Id. at *12. The court concluded that ''the Act merely provides that the employee's representative must be authorized by the employees, not that the representative must also be an employee of the employer.'' Id.

Following this decision, on April 25, 2017, OSHA rescinded the Sallman letter (Document ID 0006). OSHA also revised the Field Operations Manual to remove language that incorporated the Sallman letter (CPL 02–00–163 (09/13/2019), Document ID 11544).

On August 30, 2023, OSHA published a notice proposing revisions of 29 CFR 1903.8(c) to clarify who may serve as a representative authorized by employees for the purpose of OSHA's walkaround inspection (88 FR 59825).

III. Legal Authority

The OSH Act authorizes the Secretary of Labor to issue safety and health ''standards'' and other ''regulations.'' See, *e.g.,* 29 U.S.C. 655, 657. An occupational safety and health standard, issued pursuant to section 6 of the Act, prescribes measures to be taken to remedy an identified occupational hazard. See 29 U.S.C. 652(8) (an occupational safety and health standard ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.''). In contrast, a ''regulation'' is issued pursuant to general rulemaking authority found, inter alia, in section 8 of the Act, and establishes an ''enforcement or detection procedure designed to further the goals of the Act generally.'' *Workplace Health and Safety Council* v. *Reich,* 56 F. 3d 1465, 1468 (D.C. Cir. 1995). Although the U.S. Chamber of Commerce (Chamber of Commerce) suggested that this rule should be subject to the requirement that ''occupational safety and health standards'' be ''reasonably necessary''

under section 3(8) of the OSH Act, (Document 1952, p. 2), inspection-related requirements, such as the requirements in 1903.8(c), are properly characterized as regulations because they do not require ''conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' 29 U.S.C. 652(8).

In this rulemaking, OSHA is revising its existing regulation at 1903.8(c) pursuant to OSHA's authority under section 8 of the OSH Act. See 29 U.S.C. 657(e) (describing the Secretary's authority to promulgate regulations related to employer and employee representation during an inspection); 657(g)(2) (describing the Secretary of Labor's and the Secretary of Health and Human Services' authority to ''each prescribe such rules and regulations as [they] may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment''). This rule clarifies employees' statutory right to a walkaround representative under section 8 of the OSH Act and does not impose any new substantive inspection-related requirements.

Several provisions of the OSH Act underscore OSHA's authority to promulgate inspection-related requirements, including those that relate to the rights of employees to have an authorized representative accompany OSHA during a physical inspection of their workplace. Section 2 of the OSH Act states that the Act's express purpose is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.'' 29 U.S.C. 651(b). To effectuate that purpose, Congress provided OSHA with broad authority under section 8 to conduct inspections of workplaces and records, to require the attendance and testimony of witnesses, and to require the production of evidence. See generally 29 U.S.C. 657. OSHA's ability to carry out workplace inspections is critical to the OSH Act's entire enforcement scheme. See 29 U.S.C. 658 (authorizing OSHA to issue citations for violations following an inspection or investigation); 659 (citations shall be issued within a reasonable time after inspection or investigation). Moreover, any approved State occupational safety and health plan must provide for an OSHA inspector's right of entry and inspection that is at least as effective as the OSH Act. See 29 U.S.C. 667(c)(3).

In addition to granting OSHA broad authority to conduct workplace inspections and promulgate regulations to effectuate those inspections, Congress also recognized the importance of ensuring employee participation and representation in the inspection process. The legislative history of section 8 of the OSH Act shows Congress' intent to provide representatives authorized by employees with an opportunity to accompany the inspector in order to benefit the inspection process and ''provide an appropriate degree of involvement of employees.'' S. Rep. No. 91–1282 91st Cong., 2nd Sess. (1970), reprinted in Legislative History of the Occupational Safety and Health Act of 1970 at 151 (Comm. Print 1971). Senator Harrison A. Williams of New Jersey, who was a sponsor of the bill that became the OSH Act, explained that the opportunity for workers themselves and a representative of their choosing to accompany OSHA inspectors was ''manifestly wise and fair'' and ''one of the key provisions of the bill.'' Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 430 (Comm. Print. 1971).

The OSH Act's legislative history further indicates that Congress considered potential concerns related to the presence of a representative authorized by employees at the inspection and ultimately decided to expressly include this right in section 8(e) of the Act. Congressional debate around this issue included concern from some members of Congress that the presence in the inspection of a representative authorized by employees would cause an undue burden on employers or be used as ''an effort to ferment labor unrest.'' See Comments of Congressperson William J. Scherle of Iowa, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 1224 (Comm. Print 1971); see also Comments of Congressperson Michel of Illinois, id. at 1057. Similarly, Senator Peter Dominick of Colorado proposed an amendment to the Senate bill that would have removed the right of a representative authorized by the employees to accompany the CSHO and instead would have only required that the CSHO consult with employees or their representative at ''a reasonable time.'' Proposed Amendment No. 1056, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 370 (Comm. Print 1971). One of the stated reasons for the proposed amendment was a concern that ''[t]he mandatory 'walk-around' provisions now in the bill could . . . lead to 'collective bargaining' sessions during the course of the inspection and could therefore interfere both with the inspection and the employer's operations.'' Id. at 372. This proposed amendment was rejected, and section 8(e) of the OSH Act reflects Congress' considered judgment of the best way to strike the balance between employers' concerns about workplace disruptions and the critical importance of employee representation in the inspection process.

And while section 8(e) underscores the importance of employer and employee representation in OSHA's workplace inspection, the Act places only one criterion on who can be an employer or employee representative and that is that the representative ''aid[ ] such inspection.'' 29 U.S.C. 657(e). It does not state that the representative must be an employee of the employer. See *Matter of Establishment Inspection of Caterpillar Inc.,* 55 F.3d 334, 338 (7th Cir. 1995) (''[T]he plain language of § 8(e) permits private parties to accompany OSHA inspectors[.]''); *NFIB* v. *Dougherty,* 2017 WL 1194666, at *12 (''[T]he Act merely provides that the employee's representative must be authorized by the employee, not that the representative must also be an employee of the employer.''). Instead, the Act authorizes the Secretary of Labor (via OSHA) to issue regulations and determine who may be a representative for purposes of the OSHA inspection. 29 U.S.C. 657(e). Congress intended to give the Secretary of Labor the authority to issue regulations related to determining the specifics and resolving the question of who could be a representative for purposes of the walkaround inspection. See Legislative History of the Occupational Safety and Health Act of 1970, at 151 (Comm. Print 1971) (''Although questions may arise as to who shall be considered a duly authorized representative of employees, the bill provides the Secretary of Labor with authority to promulgate regulations for resolving this question.'').

The National Retail Federation (NRF) argued that the ''Saxbe Amendment'' to the OSH Act demonstrates that an ''authorized'' representative must be ''one selected through the NLRA selection process'' (Document ID 1776, p. 8). The Saxbe Amendment sought to ''clarif[y] and protect[ ] from abuse'' the right of accompaniment by adding ''provisions making such right clearly subject to regulations of the Secretary, defining the purpose of such accompaniments as aid of the inspection, and extending mandatory consultation rights to a reasonable

number of employees where there is no 'authorized' representative of employees.'' Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 197–98 (Comm. Print. 1971). NRF points to the reason given for this amendment, which was to avoid scenarios in which the Secretary would have to ''resolve union organizing issues which have no relationship to this legislation.'' (Document ID 1776, p. 9) (citing Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 198 (Comm. Print 1971)).

This reference to union organizing simply reflects Congress's acknowledgement that in some workplaces there may be disputes concerning union representation. However, it cannot be read to deny accompaniment rights to employees in non-union workplaces. See Comments of Congressperson William J. Scherle of Iowa, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 1224 (Comm. Print 1971) (''The bill provides that union representatives *or any employee representative* be allowed to accompany inspectors on their plant tours.'' (emphasis added)). Moreover, the concern raised about union organizing has been addressed both through OSHA policy and regulations. As discussed in Section IV.E, National Labor Relations Act and Other Labor-Related Comments, it is OSHA's longstanding policy to avoid being interjected into labor relations disputes. See also OSHA Field Operations Manual, Chapter 3, Sections IV.G–H (''Under no circumstances are CSHOs to become involved in a worksite dispute involving labor management issues or interpretation of collective bargaining agreements''). OSHA's regulations also provide that the inspection shall ''preclude unreasonable disruption of the employer's establishment,'' 29 CFR 1903.7(d), and that the CSHO may deny the right of accompaniment to any person whose conduct ''interferes with a fair and orderly inspection.'' 29 CFR 1903.8(d). Further, where there is a dispute that prevents the CSHO from determining with reasonable certainty who is the authorized employee representative, the CSHO will consult with a reasonable number of employees concerning matters of safety and health in the workplace. 29 CFR 1903.8(b).

This final rule does not infringe on employer's Fourth Amendment rights. The Fourth Amendment protects employers against ''unreasonable searches and seizures,'' and, absent consent from an employer, OSHA is required to obtain a warrant to conduct a physical inspection of their workplace. See *Marshall* v. *Barlow's Inc.,* 436 U.S. 307 (1978). Where the government has sought and obtained a search warrant supported by probable cause and acted within its scope, the resulting search is presumptively reasonable under the Fourth Amendment. See *Sims* v. *Labowitz,* 885 F.3d 254, 268 (4th Cir. 2018). ''And for the search to be reasonable, it does not have to be conducted flawlessly nor by the least intrusive means.'' Id. (citing *Skinner* v. *Ry. Labor Executives' Ass'n,* 489 U.S. 602, 629 n.9 (1989)). This rule comports with the Fourth Amendment's prohibition against ''unreasonable searches and seizures'' because all OSHA inspections, including those in which employees authorize a third-party walkaround representative under this final rule, will be carried out either with the employer's consent or pursuant to a duly issued inspection warrant. Furthermore, while the OSH Act grants the Secretary of Labor broad authority to inspect workplaces ''without delay'' to find and remedy safety and health violations, 29 U.S.C. 657(a)(1), these inspections must be carried out ''during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner.'' Id. at 657(a)(2); see also 29 CFR 1903.7(d) (''The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.'').

Some commenters argued that allowing a third-party employee representative to accompany OSHA during the walkaround inspection would make OSHA's search unreasonable (see, *e.g.,* Document ID 1976, p. 19). However, as discussed in Section IV.D.2, Fourth Amendment Issues, the mere presence of a third-party employee representative on the employer's premises does not render OSHA's inspection unreasonable for Fourth Amendment purposes. See *Bills* v. *Aseltine,* 958 F.2d 697, 703 (6th Cir. 1992) (noting that a third party's entry onto subject's private property may be ''justified if he had been present to assist the local officers''); see also *Wilson* v. *Layne,* 526 U.S. 603 (1999) (holding that bringing members of the media into a home during the execution of a search warrant violated the Fourth Amendment when the presence of the third parties in the home was *not* in aid of the execution of the warrant).

Additionally, contrary to the concerns expressed by some commenters opposed to the rule, this rulemaking does not grant third parties ''unfettered access'' to an employer's private property (see, *e.g.,* Document ID 0040, p. 4; 0045; 0235, p. 2; 0528; 1757, p. 3; 1762, p. 3; 1974, p. 2; 9316). Rather, as explained in Sections IV.A, IV.C, and IV.D.II, the role of the third-party representative is limited to aiding the inspection; they are only permitted to accompany the CSHO, and they may not stray from the CSHO or conduct their own searches.

This final rule preserves the requirement that the CSHO must first determine ''good cause has been shown'' why the accompaniment by a third party is ''reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.'' 29 CFR 1903.8(c). And, under OSHA's existing regulations, the CSHO is authorized to deny the right of accompaniment to any person whose conduct interferes with a fair and orderly inspection. 29 CFR 1903.8(d). Accordingly, OSHA inspections conducted pursuant to this rule will comport with the Fourth Amendment's reasonableness requirement because the role of the third-party employee representative will be limited to aiding OSHA's inspection. Indeed, the CSHO will ensure the inspection is conducted in a reasonable manner per section 8(a)(2) of the Act and 29 CFR 1903.3(a). See *Matter of Establishment Inspection of Caterpillar Inc.,* 55 F.3d at 339 (''[T]he Act and its regulations establish a number of administrative safeguards that adequately protect the rights of employers and limit the possibility that private participation in an inspection will result in harm to the employer.'').

Moreover, because OSHA's inspections are conducted in accordance with the Fourth Amendment, they do not constitute a ''physical taking'' under the Takings Clause of the Fifth Amendment. Under the Fifth Amendment's Takings Clause, the government must provide just compensation to a property owner when the government physically acquires private property for public use. See *Tahoe-Sierra Pres. Council, Inc.* v. *Tahoe Reg'l Plan. Agency,* 535 U.S. 302, 321 (2002). However, the Supreme Court has recognized that ''[b]ecause a property owner traditionally [has] had no right to exclude an official engaged in a reasonable search, government searches that are consistent with the Fourth Amendment and state law cannot be said to take any property right from landowners.'' *Cedar Point Nursery* v. *Hassid,* 141 S. Ct. 2063, 2079 (2021).

Nonetheless, some commenters argued that the rule would affect an unconstitutional *per se* taking under *Cedar Point Nursery* because it would grant third parties access to the employer's property (Document ID 0043, p. 2–3; 1952, p. 8–9; 1976, p. 18–19). As discussed more fully in Section IV.D.3, Fifth Amendment Issues, this rule does not constitute a *per se* taking because the presence of third-party employee representatives on the employer's property under this rule will be limited to accompanying the CSHO during a lawful physical inspection of the workplace and their sole purpose for being on the employer's premises will be to aid the inspection. See 29 CFR 1903.7(d), 1903.8(b); see also *Matter of Establishment Inspection of Caterpillar Inc.,* 55 F.3d at 339.

Based on the foregoing, OSHA has determined that it has legal authority for its revisions to OSHA's existing regulation at 29 CFR 1903.8(c).

IV. Summary and Explanation

On August 30, 2023, OSHA proposed amending its existing rule for the Representatives of Employers and Employees at 29 CFR 1903.8(c) to clarify who may serve as a representative authorized by employees during OSHA's walkaround. 88 FR 59825. OSHA provided sixty days for public comment and subsequently extended the comment period for an additional two weeks. 88 FR 71329. By the end of the extended comment period, OSHA had received 11,529 timely comments on the proposed rule that were posted to the docket.

Prior to this rulemaking, the rule stated that a representative authorized by employees ''shall be an employee(s) of the employer.'' However, that regulation also created an exception for ''a third party who is not an employee of the employer'' when, ''in the judgment of the Compliance Safety and Health Officer, good cause has been shown'' why the third party was ''reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. . . .'' 29 CFR 1903.8(c) (1971). The regulation also listed two non-exhaustive examples of such third parties—a safety engineer and an industrial hygienist.

OSHA proposed two revisions of 29 CFR 1903.8(c). First, the agency proposed to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party. Second, OSHA proposed that a third-party representative authorized by employees may be reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace by virtue of their knowledge, skills, or experience. This proposed revision was intended to clarify that the employees' options for third-party representation during OSHA inspections are not limited to only those individuals with skills and knowledge similar to that of the two examples provided in prior regulatory text: Industrial Hygienist or Safety Engineer.

OSHA noted in the Notice of Proposed Rulemaking (NPRM) that the proposed revisions to section 1903.8(c) would not change the CSHO's authority to determine whether an individual is a representative authorized by employees (29 CFR 1903.8(b)). Also, the proposed revisions would not affect other provisions of 29 CFR part 1903 that limit participation in walkaround inspections, such as the CSHO's authority to prevent an individual from accompanying the CSHO on the walkaround inspection if their conduct interferes with a fair and orderly inspection (29 CFR 1903.8(d)) or the employer's right to limit entry of employee authorized representatives into areas of the workplace that contain trade secrets (29 CFR 1903.9(d)). As always, the conduct of OSHA's inspections must preclude unreasonable disruption of the operations of employer's establishment. See 29 CFR 1903.7(d).

OSHA sought public comment on all aspects of the rule, including why employees may wish to be represented by a third-party representative and examples of third-party representatives who have been or could be reasonably necessary to the conduct of an effective and thorough walkaround inspection. OSHA also sought examples and information about any other unique skills that have been helpful or added safety and health value to OSHA's inspection. Additionally, OSHA solicited input on regulatory options, such as whether the agency should maintain the ''good cause'' and ''reasonably necessary'' requirement.

OSHA received comments in favor of the rule and opposed to it, ranging from requests to withdraw the rule entirely to criticism that the rule does not go far enough to ensure that employees are able to select a representative of their choice. Many organizations representing employers contended that the rule represents a significant change to OSHA's procedures and will facilitate union organizing. Among other arguments, these organizations generally argued that the rule: (1) conflicts with the OSH Act and existing OSHA regulations; (2) infringes on employers' Constitutional rights, particularly property rights; (3) imposes substantial costs, particularly for small businesses; and (4) will be difficult for OSHA to administer. Conversely, organizations representing employees praised the rule for encouraging employee representation, ensuring thorough and effective inspections, and promoting workers' safety and health. Some organizations representing employees also argued that OSHA should eliminate the ''good cause'' and ''reasonably necessary'' requirement for third parties.

OSHA considered all issues raised, and, as explained in depth below, determined that revising 1903.8(c) more clearly aligns with the language and purpose of section 8(e) of the OSH Act, 29 U.S.C. 657(e). Moreover, OSHA's revisions to 1903.8(c) better ensure employee involvement in an OSHA inspection, which is a critical component to conducting an effective and thorough inspection. As explained further below, OSHA has decided to retain the existing ''good cause'' and ''reasonably necessary'' requirement in the final rule. Additionally, because of commenter concerns that the use of the word ''participation'' in the NPRM suggested the employee representative had a role in conducting OSHA's inspection, OSHA removed that term in favor of ''accompaniment'' in the final rule.

A. The Need for and Benefits of Third-Party Representation

The text of the OSH Act provides that, ''[s]ubject to regulations issued by the Secretary, a representative of the employer and *a representative authorized by his employees* shall be given an opportunity to accompany the Secretary or his authorized representative during'' physical workplace inspections. 29 U.S.C. 657(e) (emphasis added). There is nothing in the OSH Act to suggest that employee (or employer) representatives must be employees of the employer. The only criterion the statute imposes is that the representative will ''aid[ ] such inspection.'' In the NPRM, OSHA explained that, based on its experience, there are a variety of third parties who might serve as representatives authorized by employees who could aid the OSHA walkaround inspection. 88 FR at 59829–30. As an example, OSHA highlighted an inspection where a worker for a company removing asbestos at a worksite reported safety concerns to OSHA and a third party. The third party contacted OSHA and a community organization on behalf of the workers to ensure their safety and health concerns were fully communicated to and understood by the

CSHO. The community organization's attorney and a former employee of the workplace were chosen as the employees' representatives to participate in the walkaround inspection. OSHA found the presence of both individuals to be very beneficial to the inspection because the representatives were able to clearly identify and communicate safety concerns to the CSHO during the walkaround. Many of the exposed workers on this worksite were not fluent in English and having representatives who the workers trusted and could facilitate communication with the CSHO enabled OSHA to conduct numerous worker interviews and better investigate the workplace conditions. 88 FR 59830.

In the NPRM, OSHA sought public comment on any other examples where third parties benefitted OSHA inspection, the reasons why employees may desire a third-party representative, and any data or anecdotal examples of individuals who may serve as third parties, among other questions. In response, many commenters, both for and against the proposed rule, commented on the need for third-party employee representatives and the benefits they bring to OSHA's inspections.

After reviewing the comments, as summarized below, OSHA has concluded that third-party representatives authorized by employees may have a variety of skills, knowledge, or experience that could aid the CSHO's inspection. This includes, but is not limited to, knowledge, skills, or experience with particular hazards or conditions in the workplace or similar workplaces, as well as any relevant language or communication skills a representative may have to facilitate better communication between workers and the CSHO. OSHA has therefore deleted the two enumerated examples in the current regulation—industrial hygienists and safety engineers—to clarify that different types of individuals may be reasonably necessary to OSHA's inspection. These revisions do not preclude an industrial hygienist or safety engineer from serving as an employee representative; instead, the revisions more properly focus the CSHO's determination on factors such as the knowledge, skills, or experience of the third party rather than the third party's professional discipline. 88 FR 59829.

1. Comments Supporting Third-Party Representation

OSHA received numerous comments demonstrating the importance and benefits of third-party representation—many of which included real-life examples of how third-party representatives have assisted OSHA over the years. Commenters supporting the rule emphasized the benefits of third parties' technical and/or subject matter expertise. They also appreciated OSHA's effort to clarify that various types of third parties, and not just those with the above expertise, can aid OSHA's inspections based on a variety of knowledge, skills, or experience (see, *e.g.,* Document ID 1972, p. 3–4). As one commenter noted, third-party representatives need not be ''certified expert[s]'' to meaningfully contribute to an inspection (Document ID 0022).

In particular, commenters supporting third-party representation pointed out that: (1) third parties can possess helpful technical and/or subject-matter expertise with hazards, industries, and OSHA's investigation process; (2) third parties can provide critical language skills and related cultural competencies; (3) third parties can facilitate employee cooperation by increasing employees' trust in the inspection process; (4) third-party representation greatly benefits inspections involving multi-employer worksites; and (5) third-party representation empowers workers and appropriately balances the rights and needs of all parties during the inspection process.

First, numerous commenters emphasized that third parties can possess helpful technical and/or subject-matter expertise with particular hazards, industries, or the investigation process (see, *e.g.,* Document ID 1753, p. 5–7). The United Steelworkers Union (USW) noted that it has brought in technical experts to serve as designated employee representatives in OSHA inspections involving issues related to combustible dust, combustion safety, electrical safety, and occupational medicine (Document ID 1958, p. 5). The Amalgamated Transit Union also stated that its union officials, including those in the Health and Safety Department, have transit safety and health knowledge that could be relevant to an OSHA investigation, such as technical expertise regarding transit vehicle designs, transit maintenance equipment, and a ''big-picture view'' of the hazard; it also pointed to union officials' ability to assemble workers for interviews, identify relevant evidence, and bring a level of familiarity and comfort in speaking with government agents that employees might lack (Document ID 1951, p. 1–2).

Similarly, the USW provided examples of where its familiarity with OSHA inspections was beneficial. In one such example involving an explosion and fatalities at a USW-represented workplace, a USW safety representative from the union's headquarters traveled to the site to assist (Document ID 1958, p. 4–5). Because access to the area at issue was initially restricted to OSHA and others, the safety representative assisted OSHA with determining who should be interviewed and what information OSHA should request from the employer; the third-party union representative was also needed to help the local union and OSHA obtain employees' involvement during interviews and the walkaround (Document ID 1958, p. 4–5).

In addition, the USW commented that ''[w]orkplaces that do not have a collective bargaining representative may be especially vulnerable to safety hazards, and employees in these workplaces benefit from the expertise and advocacy experience that a community group, safety expert, or labor organization can provide in a walkaround inspection'' (Document ID 1958, p. 3). Farmworker Justice agreed, recognizing that third parties such as union representatives and worker advocates have industry-specific or workplace safety expertise that they can use to help workers identify and communicate workplace safety concerns to OSHA (Document ID 1763, p. 3–4).

Several commenters emphasized the benefits of third parties' industry-specific expertise in particular. For example, the Utility Workers Union of America (UWUA) noted that, in recent years, the UWUA national union provided a walkaround representative in numerous incidents that ''have proven the difference between a fair investigation and one that unfairly weighs in the employer's balance'' (Document ID 1761, p. 1). UWUA described one inspection in Pennsylvania involving the death of an overhead lineman who had been working with a crew operating a bucket truck when that truck unexpectedly rolled downhill and overturned in the road (Document ID 1761, p. 1). UWUA explained that the national union representative was able to inform the CSHO about technological and work practice changes in the industry, including the use of an inclinometer, that were not immediately apparent even to the workers themselves due to inadequate training (Document ID 1761, p. 1). OSHA's inspection benefitted from the national union representative's industry-specific expertise (Document ID 1761, p. 1).

Similarly, the USW also highlighted an OSHA inspection that benefitted

from a third-party representative who had industry-specific expertise (Document ID 1958, p. 3). In that inspection, where a USW mechanic died in a flash fire involving a dust collection system, a USW safety representative from the union's headquarters accompanied the CSHO along with local union representatives who had never been part of an OSHA inspection or a fatality investigation (Document ID 1958, p. 3). The USW safety representative's experience in the industry, experience serving on one of the National Fire Protection Agency's combustible dust committees, and experience with prior OSHA inspections and fatality investigations benefitted the inspection (Document ID 1958, p. 3–4). According to the USW, the CSHO confirmed that the third-party's assistance made the inspection more ''through[ ] and complete'' (Document ID 1958, p. 3).

In the healthcare industry, one commenter, a former director of the safety and health program for the American Federation of State, County and Municipal Employees (AFSCME), provided examples of where this commenter was able to assist CSHOs during past inspections with hazards that were not well-known at the time (Document ID 1945, 2–3). This commenter stated that they were able to provide guidance to CSHOs regarding workplace violence and bloodborne pathogens and what similar facilities were doing to abate similar problems and hazards (Document ID 1945, p. 2–3).

In addition, the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, (''IATSE'') asserted that third-party representation can also benefit inspections in their industry, as ''[t]erminology, specific job functions, equipment, and procedures might be unfamiliar to an industry outsider'' (Document ID 1970, p. 1). As an example, IATSE explained that, if a worker was injured in a remote location during a motion picture production, a third-party walkaround representative could explain the industry practice of equipment rentals, camera placement, crew positions, and other industry-standard procedures (Document ID 1970, p. 1).

Several of these commenters explained that the expertise of third parties is helpful to OSHA because CSHOs cannot be expected to have knowledge or expertise with every industry, craft, task, hazard, occupation, or employer (Document ID 1969, p. 14; see also 1753, p. 5–7). Commenters noted that third parties can assist when hazards are hidden or not immediately apparent to the CSHO (see, *e.g.,* Document ID 1753, p. 7).

Second, many commenters, including the National Employment Law Project (NELP), also identified a need for third-party representatives with language skills when CSHOs interact with workers from a linguistic or other background with which the CSHO is unfamiliar (see, *e.g.,* Document ID 1972, p. 4). Numerous commenters noted the importance of third-party representatives who can interpret for limited-English proficient workers (see, *e.g.,* Document ID 0030; 0037; 0526, p. 1–2; 1958, p. 2). For example, the USW explained that ''employees can offer significantly more information when they can comfortably communicate in a language in which they are fluent'' (Document ID 1958, p. 2). MassCOSH described the importance of having a ''respected, culturally and linguistically competent'' employee representative to ensure the CSHO obtains information needed for a complete and thorough inspection (Document ID 1750, p. 3). MassCOSH provided an example where several Central American immigrant workers suffered from lead poisoning at a lead recycling facility in Massachusetts (Document ID 1750, p. 3). The CSHO did not speak Spanish and could not communicate with Spanish-speaking workers, and so was unable to identify areas of lead contamination (Document ID 1750, p. 3). Workers subsequently contacted MassCOSH, which contacted OSHA and provided a Spanish-speaking representative to accompany the CSHO on a second inspection (Document ID 1750, p. 3). The representative was able to facilitate communication between the CSHO and workers, who pointed the CSHO to the areas that were particularly contaminated with lead but were not easily found (Document ID 1750, p. 3).

Similarly, Justice at Work described how a worker organization it collaborates with in Massachusetts, Centro Comunitario de Trabajadores (CCT), works with workers who face significant language barriers because many in the community do not speak English, and some are not fluent in Spanish and need K'iche' interpretation (Document ID 1980, p. 2). Justice at Work noted that a CCT leader was selected by workers to assist OSHA during a fatality investigation several years ago and workers were ''immediately comfortable to see a member of their community there; they spoke freely with the CCT leader and pointed out the danger areas in the worksite'' (Document ID 1980, p. 2).

United Brotherhood of Carpenters and Joiners of America (UBC) explained that union representatives may be aware of languages spoken by a workforce in a specific geographic area and have the language skills necessary to communicate with these workers (Document ID 1753, p. 6–7). UBC further noted that when serving as a third-party representative, these union representatives can bring these skills to assist CSHOs who may lack such a familiarity with the languages spoken by workers in that specific geographic area, such as Polish in the Chicago-area (Document ID 1753, p. 6–7). Nebraska Appleseed, which partners with hundreds of immigrant community members in advocating for safer working conditions, explained that workers in meat and poultry processing facilities often speak Spanish, Somali, Karen,[1] Vietnamese, and other languages not typically spoken by local OSHA staff (Document ID 1766, p. 1–3). Similarly, United Food and Commercial Workers (UFCW) explained that many union members struggle with language barriers, noting that in Nebraska and South Dakota, the immigrant population makes up over half the working staff (Document ID 1023, p. 3–4). Project WorkSAFE noted that, in Vermont, there is an increasing need to have individuals at a worksite who speak Spanish and English for translation purposes, but, in their experience, none of the CSHOs in Vermont OSHA speak Spanish (Document ID 0037).

A third-party's language skills can prevent situations ''where employers or 'ad hoc' interpreters are the go-betweens for the CSHO and the worker'' (Document ID 0526, p. 2). Justice at Work Pennsylvania explained that when supervisors translate for workers, flawed interpretations or even full fabrications may result, and a translator can facilitate ''an accurate and complete'' conversation between CSHOs and workers (Document ID 0526, p. 2). NELP stated that ''poor communication between workers onsite and OSHA inspectors is not solely a function of language access. OSHA compliance officers may lack the cultural competence, community knowledge, and existing relationships with workers that are necessary to facilitate trust and frank communication'' (Document ID 1972, p. 4). The USW also added that third-party representatives can provide ''language justice'' by ensuring ''cultural competency, trust and knowledge'' (Document ID 1958, p. 2). Even when a CSHO has the requisite language skills

[1] Karen languages are spoken in parts of Burma and Thailand.

or access to an interpreter, third-party representatives can provide needed ''language and cultural competency skills'' or have a prior relationship with workers, (Document ID 1972, p. 4–5; see also 1969, p. 18), and thereby bridge the gap between workers and CSHOs (see Document ID 1763, p. 4; 1972, p. 4). The AFL–CIO provided such an example when immigrant workers chose a faith leader from their community to be a representative during an OSHA inspection (Document ID 1969, p. 14). This faith leader helped the workers overcome their fear of speaking to the CSHO by drawing upon a prior relationship with the workers and by interpreting for them (Document ID 1969, p. 14).

Third, commenters explained that, in addition to technical expertise, third-party representatives may also benefit inspections by increasing employees' trust in the inspection process and thereby their cooperation (see, *e.g.,* Document ID 1972, p. 5–6). Commenters identified several reasons that employees may be reluctant to speak to an OSHA official, such as unfamiliarity with OSHA and their rights under the OSH Act, fears of retaliation, negative immigration consequences, language or cultural barriers, or their age, among other reasons (see, *e.g.,* Document ID 0526, p. 3; 1031; 1763, p. 2–4). The AFL–CIO explained that many employers discourage workers from engaging with OSHA, noting that workers have shared that their employer threatened them with getting in trouble, personally fined, or losing their job as a result of an OSHA inspection (Document ID 1969, p. 13). The AFL–CIO noted that vulnerable workers, including immigrant workers and refugees, may fear that speaking with OSHA will jeopardize their ability to stay and work in the United States (Document ID 1969, p. 13). Similarly, Justice at Work Pennsylvania shared that, in one client's workplace, employees were too fearful to cooperate with OSHA after their employer called U.S. Immigration and Customs Enforcement on a co-worker (Document ID 0526, p. 3). Several commenters noted that employees ''may feel unsafe speaking to OSHA inspectors without a trusted representative. . . .'' such as worker centers, unions, community organizations, and attorneys (see, *e.g.,* Document ID 0031; 0034; 1031).

Commenters identified several ways that such third-party representation can promote employee trust and cooperation. For instance, commenters explained that a trusted employee representative can help workers understand OSHA's inspection process (see, *e.g.,* Document ID 0042). Commenters also stated that third-party representatives can guide and support workers through the inspection process, providing assurances that it is safe and worthwhile to provide information and encouraging employees to communicate openly with OSHA (see, *e.g.,* Document ID 0526, p. 3; 1969, p. 13). The AFL–CIO noted several examples of situations where workers were willing to speak with OSHA when a trusted representative was present, including the example described above where workers chose a faith leader who they knew personally and trusted (Document ID 1969, p. 14).

Additionally, commenters noted that third-party representatives can also serve as a buffer between the employer and employees who fear retaliation (see, *e.g.,* Document ID 0014; 0022; 0089; 0120; 0526, p. 3; 1023, p. 5; 10725) and can communicate employees' concerns for them (see, *e.g.,* Document ID 1728, p. 3). As the National Black Worker Center explained, ''We understand the layered experience of Black workers on the job, including the fear of reporting health and safety issues due to employer retaliation. We are uniquely suited to support workers who may have reservations about calling out issues on the job'' (Document ID 1767, p. 2–3). The National Black Worker Center explained that allowing worker centers to provide a third-party employee representative will ensure that ''the specific concerns and experiences of workers, including those who have been historically underserved and underrepresented, are given due consideration during inspections'' (Document ID 1767, p. 3).

Some commenters also mentioned that a third-party representative can be especially helpful during fatality investigations, which are ''particularly sensitive'' (Document ID 1969, p. 17) and ''stressful'' for employees (1958, p. 3–5). In these situations, third-party representatives can put employees at ease and enable them to feel more comfortable interacting with CSHOs (See, *e.g.,* 1958, p. 3–5; 1969, p. 17).

Several commenters also referenced an OSHA investigation in Palmyra, Pennsylvania where third-party representatives from the National Guestworkers Alliance (NGA), a workers' advocacy group, had developed a relationship with the foreign students who worked at the inspected facility and assisted them by filing an OSHA complaint and accompanying OSHA during the inspection (see, *e.g.,* Document ID 1945, p. 4–5; 1958, p. 3; 1978, p. 4–6). Commenters explained that OSHA benefitted from NGA's representation of these workers in identifying and understanding workplace safety issues (see, *e.g.,* Document ID 1945, p. 4–5).

Fourth, several commenters pointed out the benefits of third-party representation on multi-employer worksites (see, *e.g.,* Document ID 1747, p. 2; 1969, p. 16; 1970, p. 2). For example, the AFL–CIO pointed to an inspection involving a multi-employer worksite with union and non-union workers; the non-union workers designated a union agent who represented other workers on site as their walkaround representative (Document ID 1969, p. 16). The union agent assisted OSHA by providing information on the workplace respiratory procedures, which revealed violations of the respiratory protection standard and recordkeeping requirements (Document ID 1969, p. 16). In addition, IATSE stated that third-party representation can be helpful for inspections involving multi-employer worksites in the entertainment industry; IATSE explained that touring workers may be unfamiliar with worksite-based hazards and a location-based representative may better aid the CSHO during an inspection (Document ID 1970, p. 2).

Fifth, and last, commenters also expressed support for allowing third-party employee representatives on walkaround inspections because there is a need to balance employee and employer rights under the OSH Act. As the UWUA explained, ''[a]lthough the value of having a worker's chosen representatives involved in the investigation process cannot be mathematically quantified, . . . [a] worker representative brings the possibility of worker trust, subject matter expertise, language justice, empowerment, and protection to a situation that can otherwise simply devolve into the meting out of blame by an employer seeking only to protect itself'' (Document 1761, p. 2). As another commenter similarly noted, third party representation can empower workers and thereby minimize the employer's ability to control what information is shared by employees, which enables CSHOs to gather more accurate information (Document ID 0526, p. 2). Other commenters also pointed to employers' ''unrestricted ability'' to select their workaround representative and argued that OSHA should go beyond the current proposal and provide employees that same right without qualification and employer interference (see, *e.g.,* Document ID 1958, p. 5–6). A commenter asserted that when workers are allowed to

designate their own representatives, workers have increased trust in OSHA, and inspections are more efficient, complete, and accurate (Document ID 1958, p. 1–2).

2. Comments Opposed to Third-Party Representation

Many commenters disputed the need for and benefits of third parties and raised numerous arguments to support their positions. These arguments included: (1) that OSHA has not presented evidence demonstrating a need for third parties; (2) third parties cannot aid OSHA's inspections when they are unfamiliar with the particular worksite being inspected; (3) industry-specific concerns should preclude third-party representation; (4) third parties may discourage employer cooperation; (5) third-party representatives will disenfranchise employees; (6) the use of third parties will lower the qualifications to be a CSHO; (7) third parties may have ulterior motives and could engage in conduct unrelated to the inspection; (8) the potential disclosure of confidential business information and trade secrets outweighs the need for third-party representation; and (9) alternatively, if third parties are allowed to serve as employee representatives, they should be limited to individuals with technical expertise or language skills.

First, commenters argued that OSHA has failed to demonstrate a need for third-party representation during the walkaround. For example, some commenters asserted that OSHA did not provide evidence that the rule will facilitate more efficient inspections, aid CSHOs during the walkaround inspection, or otherwise promote the safety and health of workers (see, *e.g.,* 1776, p. 10; 1939, p. 4; 1953, p. 4; 1976, p. 4 fn. 9). Commenters questioned why CSHOs were not capable of handling inspections on their own and needed third parties to assist them or were passing off their inspection responsibilities to others (see, *e.g.,* Document ID 0046; 1938, p. 1; 1974, p. 3–4; 3347). The Pacific Legal Foundation also asked why OSHA needed third parties on an employer's premises when third parties could accomplish their activities, such as communicating with employees, offsite (Document ID 1768, p. 5).

Relatedly, other commenters argued that OSHA does not need third-party employee representatives during its inspections because OSHA's current inspection procedures are sufficient (see, *e.g.,* Document ID 1960, p. 1). For example, one commenter stated that employees are already empowered to participate in OSHA's inspections since they can file anonymous complaints and speak with CSHOs in private (Document ID 1955, p. 3). Similarly, commenters asserted that the FOM already accounts for situations where CSHOs need third-party translation and that the current regulation allows for third parties with technical expertise to accompany CSHOs in ''limited situations'' (Document ID 1960, p. 3–4; see also 1952, p. 2). Ultimately, commenters asserted that ''OSHA is improperly seeking to address a nonexistent issue'' (Document ID 1955, p. 3; see also 1976, p. 4) and that ''[t]here is no pressing need for this change'' (Document ID 9002).

Second, commenters expressed skepticism that third parties who are unfamiliar with a specific worksite could have anything meaningful to contribute to an OSHA inspection (see, *e.g.,* Document ID 0033). For example, the American Chemistry Council asserted that each chemical manufacturing facility and its hazards are unique and that merely having a general understanding of hazards is insufficient to truly aid an OSHA inspection (Document ID 1960, p. 2). Commenters argued that employees of the employer, and not third parties, are better suited to be representatives because employees understand the specific tasks at issue by virtue of their employment and may have received job-specific training (see, *e.g.,* Document ID 1960, p. 2). NFIB also took issue with the type of knowledge, skills, or experience that OSHA indicated could aid the inspection, asserting that ''[w]hat constitutes relevant knowledge or skills is left vague'' and that it is unclear whether the phrase ''with hazards or conditions in the workplace or similar workplaces'' modifies ''experience'' or also ''relevant knowledge'' and ''skills'' (Document ID 0168, p. 5).

Third, commenters also raised a number of industry-specific safety and security concerns. For instance, in the manufacturing industry, the Illinois Manufacturer's Association raised safety concerns, asserting that third-party representatives were unnecessary because they could pose safety risks to themselves or others, or to the employer's products due to their lack of expertise and/or training (see, *e.g.,* Document ID 1762, p. 2–3; 1770, p. 4; 1774, p. 4; 1937, p. 2; 1974, p. 2–3; 1946, p. 7; 1942, p. 5). In addition, commenters raised safety and security-related concerns for their industries. The National Council of Farmer Cooperatives explained that some agriculture employers are required to restrict access to their facilities to only authorized personnel who are trained in practices of ensuring food safety; this commenter expressed concerns that the proposed rule could result in noncompliance with that requirement (Document ID 1942, p. 5). The Food Industry Association asserted that the presence of third parties could create serious food safety hazards in food production and warehousing, noting the need for following strict sanitation protocols (Document ID 1940, p. 3). The American Chemistry Council similarly raised concerns about third parties in the chemical industry who have not undergone background checks or who lack credentials through the Chemical Facility Anti-Terrorism Standards program or the Transportation Worker Identification Credential program (Document ID 1960, p. 5).

Commenters also raised concerns in the healthcare context (see, *e.g.,* Document ID 0234, p. 2). Hackensack Meridien Health shared two examples: (1) at one of its hospitals, a union brought in a third party to provide feedback on a workplace safety issue and shared information with OSHA that was not scientifically sound (though OSHA did not ultimately use the information); and (2) employees brought in an expert for a walkaround who did not recognize a patient safety concern, which the employer's internal team later identified and remediated (Document ID 0234, p. 2). According to Hackensack Meridian Health, both instances could have resulted in harm to patients or team members because the third party did not possess the requisite expertise (Document ID 0234, p. 2).

Fourth, commenters expressed concerns that third parties could discourage cooperation from employers. Commenters argued that third parties could ''discourage[ ] employer cooperation in the inspection process'' (see, *e.g.,* Document ID 1938, p. 1). One commenter asserted that most employers currently cooperate with inspections by not requiring warrants; however, it predicted that more employers will request warrants if employee representatives can be third parties, including due to the fear of union organizing (Document ID 1938, p. 9; see also 1772, p. 1).

Fifth, some commenters also asserted that third-party representation would ''disenfranchise'' employees by replacing employee representatives with third-party representatives (see, *e.g.,* Document ID 1120; 1123; 1163). A commenter asked, ''Would you like for someone off the street to come in and tell you to 'pack up your stuff and leave,

I'm replacing you?' I wouldn't think so'' (Document ID 1163).

Sixth, commenters also asserted that third-party representation could result in lowering the qualifications to be a CSHO. For example, some commenters, such as Larson Environmental, expressed concern that the proposal would result in ''soften[ing] or water[ing] down the need for technical expertise and training of OSHA employees'' (Document ID 1109; see also 0033).

Seventh, commenters argued that third parties may not benefit OSHA's inspections because third parties may have ulterior motives and be engaged in conduct unrelated to the inspection (see, *e.g.,* Document ID 1775, p. 6; 1937, p. 5). For example, commenters suggested that third parties could engage in union organizing (Document ID 0168, p. 5–6; see also 1964, p. 2). Commenters also expressed concerns that attorneys or experts serving as third-party representatives could use the walkaround to conduct pre-litigation discovery in personal injury or wrongful death actions (Document ID 1938, p. 5; 1976, p. 11–12) or that attorneys could use the walkaround to solicit clients (Document ID 1953, p. 5). Others also worried about disgruntled former employees engaging in workplace violence or causing conflict (see, *e.g.,* Document ID 1762, p. 3–4; 1781, p. 2), and raised concerns about the conduct of other third parties such as competitors, relatives or friends of injured or deceased employees, job applicants who did not a receive a job, or individuals with ideological differences (see, *e.g.,* Document ID 1272; 1533; 1701; 1762, p. 3–4; 1937, p. 5; 1976, p. 11–12). For example, the American Family Association asserted that ''[a]llowing facility access to a third-party representative who might hold views antithetical to AFA's mission could easily disrupt the current requirement that OSHA conduct a 'fair and orderly inspection'' (Document ID 1754, p. 3).

Eighth, commenters also argued that the need to protect trade secrets and other confidential information outweighs the need for third parties. For example, commenters voiced concerns that a third-party representative, such as competitor or someone who is hostile to the employer being inspected, could obtain and disclose trade secrets or other confidential business information (see, *e.g.,* Document ID 0040, p. 4; 0175, p. 2; 11515) or relatedly, pose antitrust issues (Document ID 1937, p. 3; 1960, p. 6). With regard to the manufacturing industry in particular, commenters explained that ''the manufacturing process itself constitutes proprietary trade secrets that would be impossible to protect from disclosure'' (Document ID 0175, p. 2) and that ''[e]ach manufacturing process may have unique or specialized features that give them a competitive edge'' (Document ID 1937, p. 3).

Commenters also raised concerns about the unauthorized disclosure of confidential business information generally; as examples of such information, they pointed to an employer's operations, customer and supplier data, intellectual property, or employees' sensitive information (see, *e.g.,* Document ID 1774, p. 3, 6; 11487). The International Foodservice Distributors Association (IFDA) provided additional examples of confidential information, including: ''the layout of the facility, staffing, large pieces of equipment, materials used, and other information that cannot be easily kept away from a third-party representative'' (Document ID 1966, p. 3). Commenters argued that the unauthorized disclosure of confidential information could occur due to the NPRM's ''lack of a set definition of 'trade secrets''' (Document ID 1774, p. 3) and the fact that OSHA's existing regulation at 1903.9 is limited to trade secrets (Document ID 1966, p. 3).

In addition, the Utility Line Clearance Safety Partnership argued that while OSHA is not permitted to disclose trade secrets or other confidential business information, which it notes is protected from disclosure in a Freedom of Information Act request, the rule fails to prevent third parties from disclosing the same information (Document ID 1726, p. 7). NRF recommended that the rule ''provide authority for injured employers to bring claims against the Secretary for monetary remedies and other sanctions'' if a third-party representative obtains trade secrets and proprietary information (Document ID 1776, p. 3–4). The Workplace Policy Institute likewise asserted that disclosure of confidential information and trade secrets to competitors or the public would result in litigation requiring OSHA staff testimony (Document ID 1762, p. 3).

Ninth, and lastly, several commenters argued that, if the final rule ultimately permitted third-party employee representatives, the rule should be narrow and limit third-party representatives to certain professions. Some commenters asserted that third parties should be limited to the enumerated examples in the current regulation—industrial hygienists and safety engineers—or to individuals with technical expertise or certain professional certifications (see, *e.g.,* Document ID 1384; 1937, p. 2). For example, the American Family Association commented that the rule should require third-party representatives to ''possess demonstrable safety and health expertise, relevant to the workplace being inspected'' (Document ID 1754, p. 2).

Several commenters, including U.S. Representative Virginia Foxx and the U.S. Apple Association, contended that the previous regulation only permitted third-party employee representatives with technical or safety expertise (see, *e.g.,* Document ID 1756, p. 2; 1936, p. 1; 1939, p. 1–2; see also 1966, p. 4–5). The North American Insulation Manufacturers Association asserted that under the previous regulation, a third-party employee representative ''must normally have specialized safety knowledge'' (Document ID 1937, p. 2). According to a coalition of state-based think tanks and public interest litigation groups (the State Policy Network), the inclusion of industrial hygienists and safety engineers as examples was intended to ''establish minimum floor threshold qualifications'' for third-party representatives; the State Policy Network further argued that, according to ''historical OSHA policy manuals,'' such individuals ''must have minimum levels of education, experience, and certification granted by professional organizations and/or State-level administrative agencies'' (Document ID 1965, p. 13). The Mom and Pop Alliance of SC also expressed concern that the proposal would ''eliminate the requisite technical credentials necessary for non-employees to participate'' in the inspection (Document ID 0528).

Other commenters supported limiting the universe of potential third parties but were open to both technical experts and interpreters serving as third parties (see, *e.g.,* Document ID 10797; 1782, p. 3). For example, the Flexible Packaging Association explained that it did not necessarily object to a third-party representative participating in a walkaround inspection, particularly if that representative was a translator, industrial hygienist, or safety engineer, but expressed concern that the proposal would permit a ''seemingly unlimited variety of people'' who can serve as third-party representatives, and urged OSHA to limit third-party representatives to technical experts and translators (Document ID 1782, p. 3). A private citizen commented that industrial hygienists and safety engineers should not be deleted, but ''language expert'' should be added as an additional example to ''help the

focus of inspections to remain on health and safety and clear communication of such'' (Document ID 10797).

3. Conclusion on the Need for and Benefits of Third-Party Representatives

After reviewing the comments, OSHA has decided to adopt its proposed revisions because allowing third-party representatives as discussed in this rule better comports with the OSH Act. Nothing in section 8(e) expressly requires ''a representative authorized by . . . employees'' to be an employee of the employer. 29 U.S.C. 657(e). Rather, the statute merely states that the representative must ''aid[ ] the inspection.'' Id. The revisions adopted by this final rule better conform with section 8(e)'s requirement by eliminating the text in the regulation requiring employee representatives to be an employee of the employer. In addition, the revisions ensure employees are able to select trusted and knowledgeable representatives of their choice, leading to more comprehensive and effective OSHA inspections. Through the agency's own enforcement experience and based on numerous comments, particularly those with real-life examples, OSHA has determined that there are a wide variety of third parties who can aid OSHA's inspection. OSHA has therefore concluded that it is appropriate to delete the examples of industrial hygienists and safety engineers in the prior rule to make it clear that a third party is not reasonably necessary solely by virtue of their professional discipline. Rather, the focus is on how the individual can aid the inspection, *e.g.,* based on the individual's knowledge, skills, or experience. The final rule, however, does not change the requirement that, once the CSHO is notified that employees have authorized a third party to represent them during a walkaround inspection, the third party may accompany the CSHO only if the CSHO determines that good cause has been shown that the third party is reasonably necessary to an effective and thorough inspection.

In deciding to adopt its proposed revisions, OSHA agreed with commenters who explained how third-party employee representatives can greatly aid OSHA inspections. In a variety of ways, third parties can assist OSHA in obtaining information and thereby ensuring comprehensive inspections. For example, the comments submitted in support of the proposed rule demonstrated that third parties can provide valuable technical expertise and support to CSHOs during walkaround inspections. This includes inspections involving workplace hazards that do not fall under a specific standard and worksites that contain hazards that are not readily apparent to the CSHO.

Third parties also may be more likely to understand industry standards than an employee of the employer, and many comments demonstrated the benefits of having a third-party representative with industry-specific expertise. Several commenters provided compelling examples of this, such as the UWUA's national representative providing guidance to a CSHO about changes in the utility industry, including the use of an inclinometer (Document ID 1761, p. 1), and the USW safety representative's contribution to a fatality inspection involving a dust collection system due to that representative's experience in the industry and service on a combustible dust committee of the National Fire Protection Association (Document ID 1958, p. 3–4). A former director of AFSCME also provided a first-hand example of how he, as a third-party employee representative, was able to draw from his knowledge and experience in the healthcare industry not only to provide guidance to the CSHO on less well-known hazards but also to share how other workplaces in the industry had addressed similar hazards (Document ID 1945, p. 2–3).

While several commenters opposed to the rule argued that third parties will lack industry-specific expertise and pose safety risks to themselves or others, or to the employer's products, comments supporting the rule demonstrate that many third parties can and do in fact possess industry-specific knowledge expertise and that such expertise has assisted OSHA's inspections. However, even if a third party lacked such industry-specific knowledge or expertise, it does not necessarily mean they will pose a risk or cause harm, as Hackensack Meridien Health contended.

Hackensack Meridien Health asserted that employees or patients could have been harmed on two separate occasions—once, when a third party provided safety feedback to OSHA that Hackensack Meridien Health did not feel was scientifically sound and, on another occasion, when an expert did not recognize a patient safety concern. However, in the first example, which does not indicate whether the third party was a walkaround representative, Hackensack Meridien Health acknowledged that OSHA did not rely on the advice. In addition, in the second example, a walkaround representative is not expected or required to identify patient concerns or replace the CSHO, as the representative's role is to aid OSHA's inspection into workplace hazards that could harm employees. Furthermore, these examples do not show that a third party caused any harm or that OSHA's inspection procedures related to employee representation were inadequate.

Concerns about risks third parties pose in certain industries are speculative and ignore the roles of both the third party and the CSHO during the inspection. Third-party representatives have a specific purpose—to aid OSHA's inspection. Therefore, they must stay near the CSHO and are not permitted to wander away from the inspection or into unauthorized areas. While some commenters in the chemical industry discussed the need for third parties to follow the facility's sanitation protocols, and some commenters in the chemical industry discussed the need for third parties to have certain credentials, OSHA has ample experience conducting investigations in worksites with such requirements. During the opening conference, the CSHO inquires about any such work rules or policies, such as policies related to PPE, areas requiring special precautions, whether any safety briefings are necessary, and any other policies relevant to the inspection. CSHOs have long adhered to such policies in conducting inspections in facilities with unique requirements, and any third party would generally need to as well, as long as those rules and policies apply equally to all visitors and are not implemented or enforced in a way that interferes with an employee representative's right to accompany the CSHO. OSHA will consider facility-specific concerns on a case-by-case basis, but anticipates that the agency's existing inspection procedures adequately address concerns about potential harm from third parties in any given industry.

In addition to certain types of expertise third parties may have, third parties can also offer interpretation skills for employees with limited English proficiency and provide greater language access by using their cultural competence and prior relationships with workers. With regard to interpretation, third parties can help ensure employees are able to have accurate and complete conversations with CSHOs and that employees do not have to rely on supervisors to interpret or on ad hoc interpreters. This can prevent situations where supervisors or ad hoc interpreters provide flawed or fabricated versions of employees' statements. While commenters have argued that OSHA could instead use bilingual CSHOs or hire outside interpreters, these comments ignore an

important component of third parties' interpretation assistance—their cultural competencies. Employees may not be as comfortable when the interpreter is a law enforcement official, such as a CSHO, or when the interpreter is unknown to them. In contrast, as commenters supporting the rule explained, if an interpreter is from a workers advocacy group or union designated by the employees, employees may trust the interpreter more and, as a result, be more willing to provide information.

Likewise, third parties can increase worker involvement in the inspection by facilitating communication between workers and OSHA. Multiple commenters submitted examples of situations where third-party representatives were trusted by workers and successfully encouraged them to speak more openly with CSHOs. Several commenters argued that employees may fear retaliation if they speak to an OSHA official, and both comments in the record and OSHA's own enforcement experience demonstrate that workers are more likely to speak openly and participate in an OSHA inspection if they have a representative who they trust. Several commenters noted that workers are the ''eyes and ears of a workplace, and are in the best position to provide OSHA with the inspection information it needs regarding the presence of hazards, the frequency and duration of worker exposure to them, and the employer's awareness of both hazards and exposures'' (Document ID 1934, p. 2; see also 1031; 1769, p. 3). Without employee cooperation and participation, OSHA may not be able to gather all the relevant information during a workplace inspection. Ensuring that workers have a trusted representative so that they are able to cooperate in an OSHA inspection is critical.

In addition, third parties may have cultural competency skills that can facilitate communication not only with employees who need interpreters but also for a number of other employees. Employees may not trust or understand government processes, and third parties, particularly third parties known to the employees, allow the employees to be more at ease or forthcoming during the OSHA inspection. The presence of third parties can also be beneficial in workplaces where employees fear retaliation or intimidation by their employer and are afraid to speak up. Employees may either feel more empowered to participate or may feel more comfortable relying on the third party to represent their interests without revealing a particular employee's identity.

Third parties may also aid inspections that are complex, include multiple employers, or involve fatalities or serious injuries. While third-party representatives do not need to be safety engineers or industrial hygienists to aid an inspection, representatives can often possess important technical or safety expertise necessary for a thorough inspection even if they are not specifically employed as safety and health professionals. In support of this, commenters asserted that union officials and worker advocates often have industry-specific or workplace safety expertise that is helpful to a CSHO's inspection and, most importantly, helps to facilitate a CSHO's communication with workers about workplace safety.

OSHA has revised the final rule to make explicit that a representative may be reasonably necessary if they facilitate communication between workers and the CSHO. As explained above, there are a number of reasons, other than language skills, why a third party may be able to facilitate communication between workers and the CSHO, including because of their trusted relationship with workers, their cultural competence, or because they can put employees at ease and enable them to speak more candidly with the CSHO. Ensuring that employees have a voice during the inspection and have the ability to speak openly and candidly with the CSHO is critical to ensuring that OSHA obtains the necessary information about worksite conditions and hazards to conduct a thorough inspection. Accordingly, OSHA has revised paragraph (c) to add communication skills to the exemplar skills that could be reasonably necessary to an effective and thorough inspection. Several commenters incorrectly asserted that the previous regulation only permitted third-party representatives with technical or safety expertise (see, *e.g.,* Document ID 1756, p. 2; 1936, p. 1; 1939, p. 1–2; see also 1966, p. 4–5), and the State Policy Network referenced an OSHA guidance document in support of its arguments that representatives ''must have minimum levels of education, experience, and certification granted by professional organizations and/or State-level administrative agencies'' (Document ID 1965, p. 13).

These comments are misguided; OSHA did not previously limit 1903.8(c) to technical or safety experts, nor do those commenters point to any evidence to support their claims. The only OSHA document referenced by the State Policy Network is an OSHA booklet titled ''The Occupational Health Professional's Services and Qualifications: Questions and Answers'' (Occupational Health Q & A), *available at https://www.osha.gov/sites/default/files/publications/osha3160.pdf.* This guidance document relates to how employers select health care professionals to ''assist the employer in achieving a safe and healthful work environment'' (Occupational Health Q & A, p. 7). Although the guidance document references occupational health care professionals' education and training, it has nothing to do with who employees may select as their walkaround representative under 1903.8(c).

Industrial hygienists and safety engineers were included in the prior regulation as examples of individuals who *may* be reasonably necessary to an inspection but were not intended to limit employees' ability to authorize the participation of third-party representatives with other skills or expertise. And the examples provided by unions and worker advocates, discussed above, show that OSHA applied paragraph (c) to allow third-party employee representatives to accompany the CSHO on the walkaround where they aid the inspection even though they were not industrial hygienists or safety engineers. The record is replete with examples of how third parties with a variety of knowledge, skills, or experience beyond technical expertise made them reasonably necessary to the conduct of an effective and thorough physical inspection. OSHA emphasizes that the examples in paragraph (c) are illustrative and not exhaustive; while the phrase ''with hazards or conditions in the workplace or similar workplaces'' modifies ''knowledge, skills, and experience,'' there may be other types of knowledge or skills that could be reasonably necessary to the conduct of an effective and thorough inspection.

OSHA also rejects comments asserting that permitting third-party employee representatives to accompany the CSHO indicates that OSHA is not competent to conduct inspections. In explaining why an employee representative must be given the opportunity to accompany the CSHO on an inspection under section 8(e) of the OSH Act, Senator Williams explained that ''no one knows better than the working [person] what the conditions are, where the failures are, where the hazards are, and particularly where there are safety hazards.'' Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational

Safety and Health Act of 1970, at 430 (Comm. Print. 1971). While CSHOs have significant expertise, training, and experience in identifying safety and health hazards, it is not reasonable to expect every CSHO to have comprehensive knowledge of every aspect of site-specific equipment, materials, work practices, and safety requirements without assistance from employees. By permitting employees to designate representatives of their choice, OSHA will be better able to obtain information from employees that is necessary to conduct a comprehensive inspection. More comprehensive OSHA inspections will be more protective of worker safety and health.

Likewise, contrary to some commenters' arguments, this rule will not result in OSHA lowering its qualifications for CSHOs or decreasing the amount or quality of training provided to CSHOs. This rule will not diminish the CSHO's role in an OSHA inspection. CSHOs will continue to be in charge of conducting inspections and have the authority to use various reasonable investigative methods and techniques, such as taking photographs, obtaining environmental samples, and questioning individuals while carrying out their inspection. See 29 CFR 1903.3(a); 1903.7(b); 1903.8(a). Rather than weakening the CSHO's role, this rule will enable CSHOs to obtain more comprehensive information during an inspection.

Commenters additionally argued that OSHA's current procedures (such as anonymous complaints and CSHO's private interviews with workers) are sufficient and that third parties can conduct all activities offsite; however, many other comments demonstrated otherwise and established that third-party representatives are critically important during the walkaround portion of the inspection. OSHA also finds that third-party representatives, including those from unions or worker advocacy groups, are needed to accompany CSHOs during inspections because representatives explaining OSHA processes or protections against retaliation before or after the inspection would not be sufficient to adequately assure workers. The physical inspection is a key part of OSHA's investigation; it is often difficult to obtain information from workers after the inspection because workplace conditions change, or workers leave employment or recall less about the circumstances of an incident that was the subject of the inspection. Having third-party representatives accompany a CSHO during the inspection can reassure workers during this vital step and allow the CSHO to gather information more effectively and efficiently. Additionally, even if workers are reassured about OSHA processes outside of the physical inspection, workers could still be intimidated or confused when faced with a CSHO without the presence of an authorized third-party representative.

In addition, OSHA disagrees with comments that asserted that employees, and not third parties, are always better suited to serve as employee representatives due to employees' familiarity with the worksite and job tasks. These comments ignore the variety of knowledge, skills, or experience third parties offer, as well as the particularities of different inspections, and the fact that employees may sometimes prefer to have nonemployee representatives accompany the CSHOs. They also disregard the many reasons employees may be reluctant or scared to participate in an inspection, much less as the employee representative. While employees who are willing to be a walkaround representative certainly aid OSHA's inspections and are entitled to be the representative if authorized by employees, OSHA disagrees with the suggestion that only employees, and never third parties, could contribute to an OSHA inspection.

OSHA does, however, recognize that there may be situations where a third-party representative will not aid OSHA's inspection during the walkaround. By maintaining the requirement that good cause be shown that the third-party representative is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, OSHA will allow third-party representatives to accompany the CSHO only when they will aid the inspection. Concerns about potential misconduct, injury, or malfeasance from third-party representatives, and how OSHA would respond, are discussed in more detail herein, including in Sections IV.E, IV.G, IV.H.

In addition, OSHA disagrees with commenters that argued that the protection of trade secrets or other confidential business information outweighs the need for third parties. These concerns can be addressed while still allowing third parties to serve as walkaround representatives. OSHA's existing regulations expressly afford employers the right to identify areas in the workplace that contain or might reveal a trade secret, and request that, in any area containing trade secrets, the authorized employee representative shall be an employee in that area or an employee authorized by the employer to enter that area. See 29 CFR 1903.9(c), (d). Although one commenter criticized the NPRM for not defining ''trade secrets,'' this term is defined in section 15 of the OSH Act by reference to 18 U.S.C. 1905, as information concerning or related to ''processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association.'' See also OSHA Field Operations Manual, Chapter 3, Section VII.E.

If an employer identifies something as a trade secret, OSHA will treat it as a trade secret if there is ''no clear reason to question such identification.'' See 29 CFR 1903.9(c); OSHA Field Operations Manual, Chapter 3, Section VII.E. Accordingly, OSHA finds that existing requirements and policies are sufficient to protect employers' trade secrets and propriety information, but will address any unique circumstances on an inspection-by-inspection basis.

While two commenters asserted that a third-party walkaround representative from a competitor could raise antitrust or anticompetition concerns, this assertion appears highly improbable. First, any third-party must be authorized by the employer's employees, and it seems unlikely that employees would authorize a competitor who would then engage in anticompetitive conduct to represent them. Further, the CSHO must find good cause has been shown that a third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. This requirement ensures that the representative will aid the inspection. Additionally, if a third party engages in conduct that is unrelated to the inspection, the CSHO has the authority to terminate the third party's accompaniment.

OSHA also disagrees with commenters that argued third parties are not needed because third parties can discourage employer cooperation or disenfranchise employees. Concerns about diminished employer cooperation and an increase in warrants are discussed in more detail in Sections IV.G. Further, commenters have also failed to show how workers will be disenfranchised by allowing third-party representatives because workers still have the right to designate employee representatives. Because third-party representatives must be authorized by workers, they cannot ''disenfranchise'' workers. Rather, they can facilitate worker participation during inspections.

Finally, comments arguing that the purpose of this rule is to facilitate union organizing are incorrect. Employee representation during the inspection is critically important to ensuring OSHA obtains the necessary information about worksite conditions and hazards. In addition, the rule does not limit third-party representatives to union representatives but clarifies that varying types of third parties may serve as employee representatives based on their knowledge, skills, or experience. Third-party representatives' sole purpose onsite is to aid OSHA's inspection, 29 U.S.C. 657(e), and CSHOs have authority to deny the right of accompaniment to third parties who do not do that or who interfere with a fair and orderly inspection. 29 CFR 1903.8(a)–(d).

Ultimately, as evidenced herein, OSHA disagrees with commenters that assert that there is no need or not a pressing need for this rulemaking. The district court's decision in *NFIB* v. *Dougherty* necessitated this rulemaking to explain OSHA's ''persuasive and valid construction of the Act.'' 2017 WL 1194666, *12. Moreover, neither the plain text of the OSH Act nor its legislative history support arguments that OSHA is required to show that there is a ''pressing need'' to clarify who is eligible to be a third-party representative. For a fuller discussion of OSHA's rulemaking authority, see Section III, Legal Authority.

For the reasons discussed above, OSHA has determined that permitting employees to select trusted and knowledgeable representatives of their choice, including third parties, facilitates the CSHO's information gathering during OSHA inspection, which will improve the effectiveness of OSHA inspections and benefit employees' health and safety. Employee representatives can ensure that CSHOs do not receive only the employer's account of the conditions in the workplace. As National COSH explained, employees are a key source of information as to specific incidents, and they also may possess information related to an employer's history of past injuries or illnesses and an employer's knowledge of or awareness of hazards (Document ID 1769, p. 2). By obtaining comprehensive information, OSHA can not only better and more timely identify dangerous hazards, including hazards that may be hidden or hard to detect, but ensure the hazards are abated quickly and do not injure or kill employees. Accordingly, OSHA concludes that its rule is necessary. See 29 U.S.C. 657(g)(2).

B. The ''Good Cause'' and ''Reasonably Necessary'' Requirement

In the NPRM, OSHA proposed to revise 29 CFR 1903.8(c) to clarify that the representative(s) authorized by employees may be a third party and that third parties are not limited to the two examples listed in the existing rule. However, as the NPRM explained, the proposed revisions would not alter the regulation's existing requirement for the CSHO to determine that ''good cause'' had been shown why the third party was ''reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.'' The NPRM requested public input regarding the ''good cause'' and ''reasonably necessary'' requirement for third-party employee representatives. The NPRM also set forth the following three questions, suggesting alternatives to OSHA's proposed revisions.

1. Should OSHA defer to the employees' selection of a representative to aid the inspection when the representative is a third party (*i.e.,* remove the requirement for third-party representatives to be reasonably necessary to the inspection)?

2. Should OSHA retain the language as proposed, but add a presumption that a third-party representative authorized by employees is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace?

3. Should OSHA expand the criteria for an employees' representative that is a third party to participate in the inspection to include circumstances when the CSHO determines that such participation would aid employees in effectively exercising their rights under the OSH Act? Why or why not? If so, should OSHA defer to employees' selection of a representative who would aid them in effectively exercising their rights?

OSHA received many comments both for and against the ''good cause'' and ''reasonably necessary'' requirement, and many commenters specifically addressed the possible alternatives. After reviewing the comments, summarized below, OSHA has decided to retain the existing ''good cause'' and ''reasonably necessary'' requirements in the final rule. Therefore, if the representative authorized by employees is a third party, the third party may accompany the CSHO during the physical inspection of the workplace if in the judgment of the CSHO, good cause has been shown why the third party's accompaniment is reasonably necessary to the conduct of an effective and thorough inspection of the workplace (including, but not limited to, because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).

1. Comments That Supported Removing the CSHO's ''Good Cause'' and ''Reasonably Necessary'' Determination Requirement in Some Form

A number of commenters asserted that OSHA should abandon the existing ''good cause'' and ''reasonably necessary'' requirement for third-party employee representatives and adopt one of the proposed alternatives in the NPRM. For example, some commenters requested that OSHA pursue the first proposed alternative—removing the CSHO's ''reasonably necessary'' determination, with the CSHO deferring entirely to the employees' selection of a representative (*e.g.,* Document ID 1023, p. 3; 1763, p. 5–6, 7–8; 1769, p. 4–5; 1777, p. 3–4; 1934, p. 4–5; 1948, p. 2; 1958, 8–9, 13; 1969, p. 2–8; 1972, p. 7–8; 1978, p. 1–2; 11231). According to these commenters, the ''good cause'' and ''reasonably necessary'' requirement is contrary to the text of the OSH Act, infringes upon workers' rights, and impairs the Act's safety and health goals.

First, several commenters argued that the ''good cause'' and ''reasonably necessary requirement'' is contrary to the language of the OSH Act. For example, National COSH contended that requiring employees to demonstrate ''good cause'' as to why a representative is ''reasonably necessary'' is an ''extra hurdle the employees' representative needs to clear before qualifying'' that is not supported by the language of the Act (Document ID 1769, p. 5). According to National COSH, section 8 of the Act ''properly determines when the employees' selected representative has a right to participate in the inspection: that is, when their purpose is to aid the inspection'' (Document ID 1769, p. 5). Likewise, the AFL–CIO stated that ''[w]orkers' belief that their chosen representative will support them is sufficient reason to find that the representative will aid the investigation'' (Document ID 1969, p. 6). In the AFL–CIO's view, ''there is no distinction between deferring to workers' choice of representatives and finding that the workers' choice is reasonably necessary to aid the OSHA investigation'' (Document ID 1969, p. 6).

In addition, commenters argued that section 8 does not authorize CSHOs to decide whether good cause has been shown that a third-party employee representative is ''reasonably necessary.'' For example, Farmworker

Justice argued that employees' right to a representative ''should not depend on a determination by the CSHO'' (Document ID 1763, p. 8). Additionally, the AFL–CIO asserted that ''giving a CSHO discretion to exclude an employee's third-party representative as not 'reasonably necessary' is contrary to the plain terms of the Act'' (Document ID 1969, p. 3–4), and that ''the Secretary does not have authority to impose limitations on employees' rights that are inconsistent with the Act.'' (Document ID 1969, p. 4). Similarly, National COSH argued that under section 8, employees' selected representative has a right to participate in the inspection regardless of whether the representative's ''participation is 'reasonably necessary to the conduct of an effective and thorough inspection,' as determined in the judgment of the CSHO'' (Document ID 1769, p. 4). The AFL–CIO recommended that OSHA remove the ''good cause'' and ''reasonably necessary'' requirement to ''ensure that the full benefits of the workers' choice is not limited by misinterpretation or CSHO variability, aligning with the purpose and language of the OSH Act'' (Document ID 1969, p. 6). Similarly, Sur Legal Collaborative recommended ''OSHA remove the proposed language in 1903.8(c) that 'in the judgment of the Compliance Safety and Health Officer, good cause' must be shown'' (Document ID 11231). Additionally, U.S. Representative Robert ''Bobby'' Scott advocated for an unqualified right for workers' lawyers to act as ''representatives in all phases of OSHA inspection, enforcement, and contest'' (Document ID 1931, p. 8).

Second, various commenters contended that requiring good cause be shown that a third-party employee representative is ''reasonably necessary'' infringes upon workers' rights by imposing a higher burden for employee representatives than for employer representatives. The AFL–CIO argued that although ''the plain language of the Act places no greater restriction on who employees may choose as their representative than it does on who the employer may choose,'' the ''existing regulation and the new, proposed rule, on the other hand, only place restrictions on employees' choice of representative, creating unequal access to the right granted both parties by the OSH Act'' (Document ID 1969, p. 3) (emphasis omitted). Similarly, National Nurses United argued that because employers are not required to demonstrate ''good cause'' at ''any part of the investigation process, OSHA should not require employees to justify their choice of representative'' (Document ID 1777, p. 3).

The American Federation of Teachers (AFT) argued that this language allows CSHOs too much discretion to reject a third-party representative that employees have selected and that disallowing third-party certified bargaining agents ''is incongruent with rights secured by the [NLRA] or public sector labor relations laws'' (Document ID 1957, p. 2). National COSH argued that OSHA should defer to employee choice because the ''presence of a representative chosen by workers helps ensure workers can participate in the process without experiencing retaliation'' (Document ID 1769, p. 3). According to National COSH, ''when workers are accompanied by a trusted community, labor, or legal representative, they can more easily overcome the threat of retaliation and other barriers to give OSHA the information it needs for a comprehensive inspection'' (Document ID 1769, p. 3). More generally, UFCW asserted that OSHA should defer to employee choice because ''limiting the employee's ability to choose representation for a matter as serious as an OSHA inspection is unfairly restrictive of the workers basic rights'' (Document ID 1023, p. 3).

Third, other commenters asserted that the inclusion of the ''good cause'' and ''reasonably necessary'' requirement impairs the safety and health goals of the OSH Act. For example, the AFL–CIO stated that ''[i]t is inarguable that worker participation improves OSHA investigations by increasing the CSHO's knowledge of the workplace and hazards'' and that ''[w]orker participation is enhanced by the presence of a worker advocate through increasing trust, increasing knowledge and expertise, providing language justice, protecting workers from retaliation, and empowering workers in the investigation process to create a safer workplace'' (Document ID 1969, p. 6).

In addition to commenters that supported eliminating the ''good cause'' and ''reasonably necessary'' requirement altogether, the Texas RioGrande Legal Aid (TRLA) supported the second alternative proposed in the NPRM and advocated for adding a presumption that a third-party representative authorized by employees is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (Document ID 1749, p. 2). TRLA suggested that employers can rebut the presumption by ''show[ing] good cause to the contrary'' (Document ID 1749, p. 2).

Farmworker Justice supported the third alternative proposed in the NPRM, arguing that ''OSHA should expand the criteria for an employees' representative that is a third party to participate in the inspection to include circumstances when the CSHO determines that such participation would aid employees in effectively exercising their rights under the OSH Act, and OSHA should defer to employees' selection of a representative who would aid them in effectively exercising their rights'' (Document ID 1763, p. 8). The Strategic Organizing Center stated that no ''additional criteria should be imposed on the workers' process for selecting their representatives, nor on the CSHOs for interpreting or approving of that process'' (Document ID 1978, p. 2). However, the Strategic Organizing Center stated that if OSHA were to adopt ''any criteria regarding worker selection of representation, it should be used only to help inform workers of their right to choose a designee'' (Document ID 1978, p. 3).

2. Comments That Generally Supported Retaining the Existing ''Good Cause'' and ''Reasonably Necessary'' Requirement and Opposed the NPRM's Alternatives

In contrast, many commenters who were otherwise opposed to this rule responded that OSHA should not remove the ''good cause'' and ''reasonably necessary'' requirement for a third party to accompany the CSHO during the walkaround (*e.g.,* Document ID 1754, p. 2; 1762, p. 4–5; 1770, p. 3; 1954, p. 5; 1966, p. 4–5; 1974, p. 5).

Several commenters argued that the ''good cause'' and ''reasonably necessary'' standard ensures that the third party has a legitimate inspection purpose for being on-site (see, *e.g.,* Document ID 1762, p. 4–5; 1770, p. 3). For example, the American Petroleum Institute argued that the ''good cause'' and ''reasonably necessary'' requirement ensures that ''the third party has a defined and accepted interest in the inspection,'' which ''help[s] reduce the risk of potential security issues their participation could raise'' (Document ID 1954, p. 5). The Chamber of Commerce stated that OSHA should retain the ''good cause'' and ''reasonably necessary'' requirement because providing employees discretion to authorize any third-party as a representative ''will turn OSHA inspections into an opportunity for individuals or groups with grievances or an agenda against the employer to advance their interests by gaining full access to the employer's property'' (Document ID 1952, p. 3). The

Employers Walkaround Representative Rulemaking Coalition also emphasized that because the purpose of a third-party representative is to aid the inspection, not to aid employees, OSHA should not defer to employee choice alone (Document ID 1976, p. 15–16).

Some commenters supported retaining the existing the ''good cause'' and ''reasonably necessary'' requirement without modification (*e.g.,* Document ID 1974, p. 5), while other commenters had questions about how OSHA will determine whether good cause has been shown why employees' chosen third-party representative is reasonably necessary and recommended that OSHA revise the requirement by providing further guidance (*e.g.,* Document ID 1762, p. 4–5; 1770, p. 4; 1775, p. 4–6; 1776, p. 5–6; 1938, p. 2–3; 1954, p. 5; 1956, p. 3–4; 1965, p. 11–16; 1974, p. 5–7; 1976, p. 11–14).

Some of these commenters disapproved of the ''discretion'' afforded to CSHOs under the proposed rule and contended that the proposed rule lacked sufficient specificity and a ''defined process'' to determine the employee representative (Document ID 1976, p. 11–15; see also 0040, p. 4–5). For example, the State Policy Network contended that further guidance is necessary because ''[t]he lack of measurable criteria, authoritative definitions, or concrete examples of what constitutes 'good cause,' 'positive contribution,' or 'reasonably necessary' delegates inappropriate and broad discretionary authority to the CSHO,'' which it argued will ''result[ ] in confusion, inconsistencies, potential financial and safety risks in workplaces, and overall uncertainty in the outworking of state plans'' (Document ID 1965, p. 1, 11).

Along the same lines, many commenters asserted that the vagueness of the ''good cause'' and ''reasonably necessary'' requirement will result in disparate application (*e.g.,* Document ID 1754, p. 2–3; 1762, p. 4–5; 1770, p. 4; 1775, p. 6–8; 1776, p. 5–6; 1938, p. 2–3, 11; 1956, p. 2–4; 1965, p. 1, 11–16). For instance, the Coalition of Worker Safety expressed concern that the rule ''contains no mechanisms to enforce the 'good cause' or 'reasonably necessary' requirements beyond the CSHO's discretion,'' which it contends ''puts employers at the mercy of the CSHO's unfettered subjective decision making about the meaning of 'good cause' or 'reasonable necessity' [and] provides employers no recourse—aside from the warrant process—to challenge the CSHOs[']determinations'' (Document ID 1938, p. 2).

Commenters also critiqued a lack of employer input in the determination process (Document ID 1726, p. 3) or asked whether there was any oversight over OSHA's inspections (Document ID 0040, p. 4–5) and what ''recourse [ ] a business owner h[as] to challenge the selection process'' (Document ID 1771, p. 1). One individual critiqued the rule for ''not provid[ing] any clear definition or rubric'' for CSHOs to follow in their determinations (Document ID 11524). Some commenters, such as the National Association of Wholesaler-Distributors, expressed concern that CSHOs will be put ''in a very unfair position'' by an alleged lack of guidance in the proposed rule creating ''additional burdens'' on CSHOs which ''are unrelated to their training and expertise'' (Document ID 1933, p. 3). Another individual commenter asserted that employers are ''at the mercy of the OSHA employees who will pick anyone they decide on'' (Document ID 1116). Additionally, the State Policy Network submitted a report from the Boundary Line Foundation, which stated that the proposed rule ''neglects to provide direction to the CSHO in the event a proffered third-party employee representative is disqualified by the CSHO'' (Document ID 1965, p. 15). This comment suggested incorporating section 8(e)'s language to ''consult with a reasonable number of [employees] concerning matters of health and safety in the workplace'' where there is no authorized employee representative (Document ID 1965, p. 15).

Some commenters opposed the second alternative presented in the NPRM and stated that OSHA should not create a presumption that a third-party representative is reasonably necessary to aid an inspection. For example, the Employers Walkaround Representative Rulemaking Coalition argued that creating a presumption would ''shift[ ] the burden of proof to the employer to show that an authorized representative is not reasonably necessary,'' which they contended is not supported by the text of the Act (Document ID 1976, p. 16). Labor Services International (LSI) argued that a presumption should not be added because it would result in increased complexity and a question of who is responsible to overcome the presumption—the employer or the CSHO (Document ID 1949, p. 4).

Other commenters opposed the third alternative presented in the NPRM and stated that OSHA should not expand the criteria to allow for a third party to serve as employees' walkaround representative when the CSHO determines that such participation would aid employees in effectively exercising their rights under the OSH Act (Document ID 1974, p. 5). For example, LSI argued that this alternative proposal is ''superfluous'' because ''the existing version of 29 CFR 1903.8(c) affords employees a role in the inspection procedure'' (Document ID 1949, p. 4).

3. Conclusion on the ''Good Cause'' and ''Reasonably Necessary'' Requirement

OSHA has considered all arguments in favor and against each of the options and has decided to retain the existing ''good cause'' and ''reasonably necessary'' requirement in the final rule. Therefore, if the representative authorized by employees is a third party, the third party may accompany the CSHO during the physical inspection of the workplace if in the judgment of the CSHO, good cause has been shown why the third party's accompaniment is reasonably necessary to the conduct of an effective and thorough inspection of the workplace (including, but not limited to, their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).

OSHA has determined that the existing ''good cause'' and ''reasonably necessary'' requirement continues to be the appropriate criteria for determining when a third-party will aid an inspection. This requirement is supported by the broad authority granted to the Secretary to promulgate rules and regulations related to inspections, investigations, and recordkeeping. See 29 U.S.C. 657(e), (g)(2); see also Section III, Legal Authority. As many commenters noted, the right of employees to authorize a representative to accompany them during the inspection of the workplace is qualified by the statutory requirement that the representative be authorized ''for the purpose of aiding such inspection.'' 29 U.S.C. 657(e). In other words, an authorized employee representative may accompany the CSHO only for the purpose of aiding the inspection. The requirement for the CSHO to determine that ''good cause'' has been shown why the third party is ''reasonably necessary'' to aid an effective and thorough inspection is consistent with the Act and ensures that an authorized representative aid in the inspection. See 29 U.S.C. 657(e), (g)(2). Thus, OSHA disagrees with commenters who suggested that OSHA lacks the authority to determine if a third party will aid an inspection.

OSHA's interpretation of section 8(e) as requiring a showing of good cause and reasonable necessity is consistent

with the authority vested in the CSHO and OSHA's other longstanding regulations. CSHOs are ''in charge of inspections'' and ''shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section.'' 29 CFR 1903.8(a), (b). The Workplace Policy Institute stated that a third-party representative should only be ''allowed on site when doing so will actually positively assist in the inspection, not simply because a third party wants to be there. The individual must have a reason for attending that is actually related to the inspection, and not some ulterior motive'' (Document ID 1762, p. 4–5). OSHA agrees and believes that the existing ''good cause'' and ''reasonably necessary'' requirement assures that this will be so. Third-party representatives are reasonably necessary if they will make a positive contribution to aid a thorough and effective inspection.

While some commenters took issue with the terms ''good cause,'' ''reasonably necessary,'' and ''positive contribution,'' OSHA notes that the ''good cause'' and ''reasonably necessary'' requirement is a single requirement and OSHA does not intend the regulation to require a separate ''good cause'' inquiry. OSHA considered deleting the term ''good cause'' from the regulation and using only the term ''reasonably necessary'' as the criterion for determining whether a third party could accompany the CSHO. OSHA rejected that approach because it could lead to unnecessary confusion. OSHA has implemented the ''good cause'' and ''reasonably necessary'' requirement, and it has been known to employees and employers, for more than fifty years. As such, OSHA finds no compelling reason to delete the term ''good cause'' from the revised regulation. Some commenters suggested that the ''good cause'' and ''reasonably necessary'' standard places a higher burden on third-party employee representatives than it does on third-party employer representatives. This is true, and OSHA has determined that a different standard is appropriate in the case of third-party employee representatives. As many commenters noted, the presence of such persons in the workplace raises property and privacy concerns that are not present where the employer has identified a third party as its representative. The ''good cause'' and ''reasonably necessary'' requirement protects against impermissible infringement of these interests by ensuring that third-party employee representatives will be present only when they aid the inspection. And this requirement ensures that the third party's presence meets the reasonableness requirements of the Fourth Amendment (see Section IV.D.2, Fourth Amendment Issues). These property and privacy concerns are not implicated where the employee representative is an employee, or when the employer selects a third party to represent it in the walkaround.

Additionally, OSHA has determined that the ''good cause'' and ''reasonably necessary'' requirement does not infringe upon employee rights. Although some commenters asserted that this language gives CSHOs too much discretion to reject employees' third-party representative, including one who is the recognized bargaining agent (such as from a union's national or international office), CSHOs have the expertise and judgment necessary to determine, on an inspection-by-inspection basis, whether a third party will aid OSHA's inspection. Moreover, several unions provided examples where representatives from the national or international union were permitted to accompany the CSHO and aided the inspection (see, *e.g.,* Document ID 1761, p. 1; Document ID 1958, p. 3–8). While CSHOs have the authority to deny the right of accompaniment to any representative that interferes with—and thus does not aid—the inspection, (see 29 CFR 1903.8(d)), OSHA anticipates that third-party recognized bargaining agents in a unionized workplace would generally be ''reasonably necessary'' to the inspection. Cf. OSHA Field Operations Manual, Chapter 3, Section VII.A.1 (explaining that ''the highest ranking union official or union employee representative onsite shall designate who will participate in the walkaround''). OSHA's discussion of how this rule interacts with the NLRA is explained in detail in Section IV.E, National Labor Relations Act and Other Labor-Related Comments. Accordingly, OSHA does not believe that the ''good cause'' and ''reasonably necessary'' requirement infringes upon or is in tension with employee rights under the NLRA or public sector labor relations laws.

Likewise, OSHA disagrees with comments that there should be a rubric for CSHOs to follow in making their determination or that CSHOs need a defined process to determine whether good cause has been shown that a third-party walkaround representative is reasonably necessary. The statute provides that an employee representative is allowed if they aid the inspection. And the regulation provides further explanation of how OSHA will implement that requirement. The regulation contains factors for the CSHO to consider in making the ''good cause'' and ''reasonably necessary'' determination, and the preamble describes numerous examples of the types of third parties who have made a positive contribution to OSHA's inspections. Accordingly, OSHA rejects the argument that the ''good cause'' and ''reasonably necessary'' requirement is too subjective, will result in disparate application, or that a rubric or defined process for determining whether a representative is reasonably necessary would be appropriate.

The OSH Act grants employees the right to a walkaround representative ''for the purpose of aiding such inspection.'' 29 U.S.C. 657(e). As explained above, OSHA has determined that third parties can aid OSHA's inspections in a variety of different scenarios. However, not all third-party representatives will necessarily aid OSHA's inspection simply because employees have selected the individual. Several commenters raised concerns that some individuals may have motivations unrelated to safety or the inspection, such as unionizing a facility or ''looking for lawsuit opportunities'' (Document ID 1953, p. 5; see also 1775, p. 7–8; 1938, p. 2–3; 1975, p. 18–21). Maintaining the ''good cause'' and ''reasonably necessary'' requirement ensures that OSHA's inspection comports with section 8(e) of the OSH Act because the CSHO has determined that the representative will in fact aid the inspection. As such, this requirement does not conflict with the text of the Act or undermine the goals of the Act.

Contrary to several commenters' claims, the ''good cause'' and ''reasonably necessary'' requirement does not place a high burden on employees. Rather, the CSHO will determine whether a representative is reasonably necessary. To determine whether ''good cause'' has been established why a third-party representative is ''reasonably necessary,'' the CSHO will inquire about how and why the representative will benefit the inspection, such as because of the representative's knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, relevant language skills, or other reasons that the representative would facilitate communication with employees, such as their cultural competency or relationship with employees. For example, this may include the representative's familiarity with the machinery, work processes, or hazards that are present in the

workplace, any specialized safety and health expertise, or the language or communication skills they have that would aid in the inspection. The CSHO will speak with employees and the employees' walkaround representative to determine whether good cause has been shown that the representative is reasonably necessary. This requirement is not a ''hurdle'' that employees must overcome, but rather better enables OSHA to ensure that a third-party employee representative will aid OSHA's inspection.

While the State Policy Network suggested additional guidance to CSHOs in the event a proffered third-party employee representative is disqualified by the CSHO (Document ID 1965, p. 16–17), this suggestion is unnecessary. Section 1903.8(b) already instructs CSHOs what to do if there is no authorized employee representative or the CSHO cannot determine who is the authorized employee representative with reasonable certainty. See 29 CFR 1903.8(b) (''If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.'').

OSHA concludes that retaining the existing requirement also strikes the appropriate balance between workers' rights and employers' property and privacy concerns. Employees, like employers, have a statutory right to a representative to aid in the inspection. See 29 U.S.C. 657(e). OSHA has determined that this requirement enables sufficient flexibility for OSHA to realize the potential benefits that third parties may provide to an inspection while remaining consistent with Fourth Amendment reasonableness requirements. If a third-party representative engages in activity unrelated to the inspection, OSHA will attempt to resolve any potentially interfering conduct and retains the authority to deny individuals the right of accompaniment if their conduct ''interferes with a fair and orderly inspection.'' 29 CFR 1903.8(d).

Finally, it is OSHA's intent that the general presumption of severability should be applied to this regulation; *i.e.,* if any portion of the regulation is held invalid or unenforceable or is stayed or enjoined by any court of competent jurisdiction, the remaining portion remains workable and should remain effective and operative. It is OSHA's intent that all portions be considered severable. In this regard, the agency intends that: (1) in the event that any portion of the regulation is stayed, enjoined, or invalidated, all remaining portions of the regulation shall remain effective and operative; and (2) in the event that any application of the regulation is stayed, enjoined, or invalidated, the regulation shall be construed so as to continue to give the maximum effect to the provision permitted by law.

C. Role of the Employee Representative in the Inspection

In response to comments received, OSHA has slightly revised the regulatory text in the final rule. OSHA's proposed revision to section 1903.8(c) stated that a third party representative could accompany the CSHO during the inspection ''if, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why their participation is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (*e.g.,* because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills).'' 88 FR 59833–34.

The use of the word ''participation'' in the proposed regulation prompted several commenters to question whether the term reflected a change in the role served by the employee representative (see, *e.g.,* Document ID 1781, p. 2–3; 1941, p. 5; 1964, p. 3; 1974, p. 3–4), while a number of commenters observed that the revision could overly broaden the role of third-party representatives (see, *e.g.,* Document ID 1964, p. 3–4; 1974, p. 3; 1976, p. 21; 6991). Other commenters described scenarios in which third-party representatives could take advantage of ambiguity resulting from the revision by performing acts not authorized by the OSH Act, *i.e.,* acts that do not aid the inspection (see, *e.g.,* Document ID 1755, p. 1; 1964, p. 4; 1974, p. 3–4; 1976, p. 5; 6991).

Some commenters expressed concern that the revision could permit representatives to participate in private employee or management interviews, independently interview employees, or gain unauthorized access to employers' private records (see, *e.g.,* Document ID 1765, p. 2; 1774, p. 6; 1964, p. 3–4; 1976, p. 5). Commenters also opposed allowing representatives to make unauthorized image, video, or audio recordings during inspections and to use such recordings for purposes other than furthering the inspection (see, *e.g.,* Document ID 1762, p. 5; 1774, p. 6; 1966, p. 2). Relatedly, one commenter suggested that employee representatives should be subject to nondisclosure requirements and only be allowed to share information with CSHOs (Document ID 8120). Commenters further asked whether third-party employee representatives could ''weigh[ ] in with their own commentary,'' and ''opin[e] on what is and is not safe,'' (Document ID 1762, p. 5). Additionally, the Office of Advocacy of the U.S. Small Business Administration asked what ''participation'' would entail and how it would affect small entities (Document ID 1941, p. 5).

While the terms ''participate'' and ''accompany'' are often used interchangeably in discussing employee walkaround rights (see, *e.g.,* OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Sections IV.D; VII.A), OSHA did not intend to change the role of the walkaround representative. Based on stakeholder comments, OSHA has determined that using the term ''accompaniment'' rather than ''participation'' maintains consistency with the OSH Act and other related OSHA regulations. See, *e.g.,* 29 U.S.C. 657(e); 29 CFR 1903.4 (establishing procedures upon objection to an inspection, including upon refusal to permit an employee representative to accompany the CSHO during the physical inspection of a workplace in accordance with 29 CFR 1903.8); 29 CFR 1908.6 (explaining procedures during an onsite consultative visit for an employee representative of affected employees to accompany the consultant and the employer's representative during the physical inspection of a workplace); 29 CFR 1960.27 (providing that a representative of employees shall be given an opportunity to accompany CSHOs during the physical inspection of any workplace, and that a CSHO may deny the representative's right of accompaniment if their participation interferes with a fair and orderly inspection). Accordingly, OSHA has removed the term ''participation'' in the final rule to clarify that the employee representative may accompany the CSHO when good cause has been shown why ''accompaniment'' is reasonably necessary to an effective and thorough workplace inspection.

OSHA received many comments related to what a third-party representative can or cannot do during the inspection (see, *e.g.,* Document ID 0234, p. 1–2; 1935, p. 1; 1937, p. 1, 4–5; 1938, p. 2–6). This rulemaking does not change the role of the third-party representative authorized by employees; the representative's role is to accompany the CSHO for the purpose of aiding OSHA's physical inspection of the workplace. The representative is permitted to accompany the CSHO

during the walkaround inspection, attend the opening and closing conferences (see OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Sections V.A, VII.A, and VIII.A), and ask clarifying questions to ensure understanding of a specific item or topic of discussion. While the representative may informally ask clarifying questions during the walkaround, private employees interviews conducted during the inspection are conducted by the CSHO in private unless the employee requests the presence of the representative.

One commenter urged that OSHA ensure that the third-party walkaround representative not be allowed to review physical and electronic records, including procedures, injury and illness logs, diagrams, emergency plans, and floor plans, along with the CSHO (Document ID 1765, p. 2). Although CSHOs may preliminarily review employer-provided documents such as safety and health manuals or injury and illness records during the walkaround inspection, in-depth review typically occurs away from the inspected worksite. However, this rule does not alter in any way the requirement that employers provide access to injury and illness records to ''employees, former employees, their personal representatives, and their authorized employee representatives,'' as those terms are defined in OSHA's Recordkeeping and Reporting regulation (29 CFR 1904.35). Additionally, the third-party representative may review records that relate to work processes, equipment, or machines at the CSHO's discretion if their review during the walkaround will aid the CSHO's inspection.

Further, during an inspection, the CSHO will ensure an employee representative's conduct does not interfere with a fair and orderly inspection. OSHA considers conduct that interferes with the inspection to include any activity not directly related to conducting an effective and thorough physical inspection of the workplace. OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Section VII.A. The FOM instructs the CSHO to advise the employee representative that, during the inspection, matters unrelated to the inspection shall not be discussed with employees. See OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Section V.E. Under section 1903.8(d), a CSHO may deny a representative the right to accompany the CSHO on an inspection if their conduct interferes with a fair and orderly inspection. Last, matters concerning the authorized representative's conduct outside the walkaround inspection is beyond the scope of this regulation or this rulemaking, and OSHA declines to add a nondisclosure requirement or other limitations to the sharing of information.

D. Constitutional Issues

1. First Amendment Issues

OSHA received several hundred comments asserting that this rule could adversely affect religious liberty, such as by permitting someone opposed to a church to be a third-party employee representative (see, *e.g.,* Document ID 1076; 1151; 1724; 1739; 6800). Other commenters suggested that churches should not be inspected (see, *e.g.,* Document ID 1360). OSHA believes that the concerns expressed in these comments are unfounded.

First, under this rule and pursuant to the OSH Act, any third-party employee representative must be authorized by the employees. Employees do not have to designate a third-party representative if they do not want to. Thus, only a third party selected by the employees of the church or other religious organization will be eligible to accompany the CSHO on the inspection. Second, a third-party employee representative may accompany the CSHO only if the CSHO concludes that good cause has been shown that the third party is ''reasonably necessary'' to conduct a thorough and effective inspection. Third, the CSHO has the authority to deny the right of accompaniment to any third-party employee representative ''whose conduct interferes with a fair and orderly inspection.'' 29 CFR 1903.8(d).

While OSHA accommodates religious practices in carrying out its responsibilities under the OSH Act, see, *e.g.,* OSHA Exemption for Religious Reason from Wearing Hard Hats, STD 01–06–005 (1994), *available at https://www.osha.gov/enforcement/directives/std-01-06-005;* Sikh American Legal Defense and Education Fund, OSHA Interpretive Letter (Aug. 5, 2011), *available at https://www.osha.gov/laws-regs/standardinterpretations/2011-08-05,* coverage of religious institutions is not at issue in this rulemaking. OSHA does conduct inspections at religious worksites, *see, e.g., Absolute Roofing & Constr., Inc.* v. *Sec'y of Labor,* 580 F. App'x 357, 359 (6th Cir. 2014) (involving OSHA's inspection of a jobsite where a worker was injured while performing repair work on a church), but for the reasons stated above OSHA finds that this rule does not adversely affect religious liberty or change OSHA's long-exercised authority to do so.

Additionally, OSHA received a few comments asserting that this rule infringed on free speech rights (see, *e.g.,* Document ID 1754, p. 2; 8781). However, these commenters did not explain why or how this rule limits free speech. This rule neither requires nor prohibits speech, and OSHA finds no merit to the argument that it limits the First Amendment right to freedom of speech.

2. Fourth Amendment Issues

While the OSH Act grants the Secretary of Labor broad authority to inspect workplaces ''without delay'' to find and remedy safety and health violations, 29 U.S.C. 657(a)(1)–(2), there are constitutional and statutory components of reasonableness that an OSHA inspection must satisfy. The Fourth Amendment of the U.S. Constitution protects employers against ''unreasonable searches and seizures.'' See U.S. Const. amend. IV; *Barlow's,* 436 U.S. 311–12. Under *Barlow's,* a warrant is constitutionally necessary for nonconsensual OSHA inspections and, therefore, if an employer refuses entry, OSHA must obtain a warrant to proceed with the inspection. 436 U.S. at 320–21; see also 29 CFR 1903.4. Contrary to the concerns expressed by the Pacific Legal Foundation (Document ID 1768, p. 6–7), this rule will not disturb employers' right under the Fourth Amendment, including their right to withhold or limit the scope of their consent, and employers will not be subject to a citation and penalty for objecting to a particular third-party representative. Moreover, both the Fourth Amendment and section 8(a) of the OSH Act require that OSHA carry out its inspection in a reasonable manner. See, *e.g., L.R. Willson & Sons, Inc.* v. *OSHRC,* 134 F.3d 1235, 1239 (4th Cir. 1998); *Donovan* v. *Enter. Foundry, Inc.,* 751 F.2d 30, 36 (1st Cir. 1984). Indeed, section 8(a) of the Act requires that OSHA's on-site inspections be conducted at ''reasonable times, and within reasonable limits and in a reasonable manner.'' 29 U.S.C. 657(a)(2).

Some commenters have argued that allowing a third-party employee representative to accompany OSHA during its physical inspection of a workplace would not be a ''reasonable'' search under the Fourth Amendment (see, *e.g.,* Document ID 1976, p. 19). For example, some commenters have asserted that the rule will force them to admit any third-party representative onto their property (see, *e.g.,* Document ID 1976, p. 21; Document ID 1952, p. 3) with others arguing that OSHA is

attempting to create a ''new . . . right'' for third parties to access private property (see, *e.g.,* Document ID 1952, p. 8). However, as an initial matter, the purpose of the Fourth Amendment is ''to safeguard the privacy and security of individuals against arbitrary Invasions by *government officials.*'' *Camara* v. *Mun. Ct. of City & Cnty. of San Francisco,* 387 U.S. 523, 528 (1967) (emphasis added). Third-party employee representatives are not governmental officials and are not performing their own searches. Their presence on the employer's premises—consistent with the terms of Section 8(e)—will be limited to aiding *OSHA's* inspection (*i.e.,* search). Additionally, this rule does not create any new rights; instead, it simply clarifies the already-existing right that employees have under section 8(e) of the OSH Act to select authorized representatives for *OSHA's* walkaround inspection.

The reasonableness of OSHA's search will initially turn on whether OSHA had administrative probable cause to initiate the inspection in the first place (such as responding to a complaint or conducting a programmed inspection). See *Barlow's,* 436 U.S. at 320–21. Where the government has sought and obtained a search warrant supported by probable cause and acted within its scope, the resulting search is presumptively reasonable. See *Sims,* 885 F.3d at 268. This rule does not diminish or alter the legal grounds that are required for OSHA to initiate an on-site inspection. Instead, it merely clarifies the type of employee representative who can accompany OSHA during a lawful inspection.

Additionally, this rule, as well as OSHA's existing regulations concerning the conduct of inspections, provides sufficient administrative safeguards to ensure the reasonableness of OSHA's inspections, even when a private party accompanies the CSHO during the walkaround inspection. See *Matter of Establishment Inspection of Caterpillar Inc.,* 55 F.3d at 339. For instance, the rule maintains the provision that the CSHO must first determine good cause has been shown why accompaniment by a third party is reasonably necessary to an effective and thorough physical inspection of the workplace. 29 CFR 1903.8(c). This rule also does not diminish or alter administrative safeguards contained in other OSHA regulations. For instance, CSHOs still have the authority to resolve all disputes about who the authorized employee representatives are and to deny the right of accompaniment to any person whose conduct interferes with a fair and orderly inspection. 29 CFR 1903.8(b), (d). Section 1903.7(d) also mandates that ''[t]he conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.'' 29 CFR 1903.7(d). Furthermore, employers have the right to identify areas in the workplace that contain or might reveal a trade secret, and may request that, in any area containing trade secrets, the authorized employee representative shall be an employee in that area or an employee authorized by the employer to enter that area. See 29 CFR 1903.9(c), (d).

In the NPRM, OSHA sought comment on whether it should add a presumption that a third-party representative authorized by employees is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. 88 FR 59833. In response, the Employers Walkaround Representative Rulemaking Coalition commented that ''[r]emoving the current constraints on third party involvement in OSHA inspections or permitting the participation of a third party not deemed 'reasonably necessary' . . . would contravene the Fourth Amendment's prohibition against unreasonable searches and seizures'' (Document ID 1976, p. 19). The Employers Walkaround Representative Rulemaking Coalition noted that in the criminal law context, the government violates the Fourth Amendment when it permits private parties with no legitimate role in the execution of a warrant to accompany an officer during the search (Document ID 1976, p. 19–20). As an initial matter, the requirements of administrative probable cause for OSHA inspections are less stringent than those governing criminal probable cause. *Barlow's,* 436 U.S. at 320–21. Moreover, as explained in Section IV.B, The ''Good Cause'' and ''Reasonably Necessary'' Requirement, OSHA has retained the requirement that the CSHO first determine that good cause has been shown that accompaniment by a third-party is reasonably necessary to an effective and thorough inspection.

Indeed, criminal law cases demonstrate that third parties may aid or assist the government official in their investigation. For example, criminal law provides that a search warrant must be served and executed by an officer mentioned therein and by no other person ''except in aid of the officer'' executing the warrant. 18 U.S.C. 3105; see also *Wilson* v. *Layne,* 526 U.S. 603 (1999). In *Wilson* v. *Layne,* the Supreme Court held that ''although the presence of third parties during the execution of a warrant may in some circumstances be constitutionally permissible,'' the presence of a news crew during the execution of an arrest warrant at a defendant's home was unconstitutional. 526 U.S. at 613–14. The Court reasoned that the Fourth Amendment requires that police actions in execution of a warrant be related to the objectives of the authorized intrusion and because the news crew was on the premises to advance their own private purposes (and not to assist the police) their presence in defendant's home was unreasonable. Id. at 611–12. In other cases involving third parties who are involved in police searches, courts have similarly held that ''the civilian's role must be to aid the efforts of the police. In other words, civilians cannot be present simply to further their own goals.'' *United States* v. *Sparks,* 265 F.3d 825, 831–32 (9th Cir. 2001), *overruled on other grounds by United States* v. *Grisel,* 488 F.3d 844 (9th Cir. 2007).

The criminal caselaw also contains examples of searches involving third parties that courts have found to be reasonable under the Fourth Amendment. For instance, in *Sparks,* the court found reasonable a warrantless search conducted with the aid of a civilian, in part, because the police officer was in need of assistance. 265 F.3d at 831–32. Similarly, in *United States* v. *Clouston,* the court held that the presence of the telephone company employees during the execution of a search warrant was reasonable where the telephone company employees were present on the premises to aid officers in identifying certain electronic devices owned by their employer and their role in the search was limited to identifying such property. 623 F.2d 485, 486–87 (6th Cir. 1980). Like in the foregoing cases, OSHA's rule—consistent with the plain text of the statute—also requires third-party employee representatives to benefit the inspection. Accordingly, the rule will maintain the language in the regulation that requires that good cause be shown why the third-party representative's accompaniment is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.

The Employers Walkaround Representative Rulemaking Coalition also expressed concern that ''absent the possession of some technical expertise lacking in the CSHO and necessary to the physical inspection of the workplace, the presence of a third party outsider (*e.g.,* union organizer, plaintiff's attorney, etc.) with no connection to the workplace and acting in his own interests violates the Fourth Amendment's prohibition against

unreasonable searches and seizures'' (Document ID 1976, p. 21). The purpose of this rule is to clarify that, for the purpose of the walkaround inspection, the representative(s) authorized by employees may be an employee of the employer or, when they are reasonably necessary to aid in the inspection, a third party. For third-party representatives, the rule will require a showing of ''good cause'' for why they are reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (including, but not limited to, because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills). OSHA has determined that this rule best effectuates the text and purpose of section 8(e) of the Act, consistent with Fourth Amendment reasonableness requirements, without imposing an overly burdensome and restrictive ''technical expertise'' requirement on employees who want a representative to accompany the CSHO during an inspection of their workplace.

The Ohio Manufacturers' Association expressed concern that the rule will ''expand the plain view doctrine'' and ''convert a targeted inspection based on a complaint to an unnecessarily comprehensive and time-consuming 'wall-to-wall' inspection'' because the third party will ''constantly scan other parts of the employer's facility to find potential violations of the OSH Act'' (Document 0040, p. 3). The Chamber of Commerce also asked whether employee representatives' observations could satisfy the ''plain view'' doctrine (Document ID 1952, p. 14). On the other hand, the National Council for Occupational Safety and Health and the Sur Legal Collaborative asserted that some employers have attempted to limit the scope of OSHA inspections by preventing CSHOs from seeing hazards that are otherwise in plain view and noted that employee representatives can point out other areas in the worksite where there are hazards (Document ID 1769, p. 2; 11231). Similarly, Worksafe described an inspection in California where the Cal/OSHA inspector did not observe areas where janitorial employees worked with bloodborne pathogens and did not inspect a garbage compactor that had serious mechanical failure because the employer was able to obscure the hazardous conditions (Document ID 1934, p. 3–4). Had Worksafe not intervened by sending Cal/OSHA videos and photos of the hazards, these hazards could have gone unabated, and employees could have been seriously injured, become ill, or died on the job (Document ID 1934, p. 4).

The ''plain view'' doctrine allows the warrantless ''seizure'' of evidence visible to a government official or any member of the general public while they are located where they are lawfully allowed. *Wilson* v. *Health & Hosp. Corp. Of Marion Cnty.,* 620 F.2d 1201, 1210 (7th Cir. 1980). The rationale of the plain view doctrine is that once evidence is ''in open view'' and is observed by the government or a member of the public from a lawful vantage point, ''there has been no invasion of a legitimate expectation of privacy'' and thus the Fourth Amendment's privacy protections do not apply. *Minnesota* v. *Dickerson,* 508 U.S. 366, 375 (1993); see also *Donovan* v. *A.A. Beiro Const. Co., Inc.,* 746 F.2d 894, 903 (D.C. Cir. 1984). Hence, third-party representatives may lawfully aid the inspection by informing the CSHO about hazards they observe in plain view during the walkaround. However, the authority to inspect areas in plain view ''does not automatically extend to the interiors of every enclosed space within the area.'' *A.A. Beiro Const. Co.,* 746 F.2d at 903. Because their role is to aid in ''the conduct of an effective and thorough physical inspection of the workplace,'' 29 CFR 1903.8(c), the third-party representative is only permitted to accompany the CSHO, and they are not permitted to stray from the CSHO or to conduct their own searches.

Moreover, the Ohio Manufacturers' Association's concerns about the inspection becoming a ''wall to wall'' inspection are overstated. The CSHO will conduct the walkaround inspection in accordance with the law and FOM and will inspect those areas where there are reasonable grounds to believe a violation could be found. Generally, OSHA conducts unprogrammed inspections (*i.e.,* inspections resulting from an employee complaint, referral, reported accident or incident) as partial inspections, which are limited to the specific work areas, operations, conditions, or practices forming the basis of the unprogrammed inspection. As explained in the FOM, however, the scope of an OSHA inspection can be expanded for a number of reasons, including employee interviews, among other reasons. OSHA Field Operations Manual, (CPL 02–00–164), Chapter 3, Section III.B.2. Hence, just like employee representatives employed by the employer, third-party employee representatives may communicate to the CSHO conditions they are aware of or observe in plain view while accompanying the CSHO on the walkaround inspection. ''The effectiveness of OSHA inspections would be largely eviscerated if compliance officers are not given some nominal right to follow up on observations of potential violations.'' *A.A. Beiro Const. Co.,* 746 F.2d at 903.

Several comments also expressed concern that the rule would violate state laws against trespassing (see, *e.g.,* Document ID 1780, p. 2; 1938, p. 6–7). For example, the Coalition for Workplace Safety cited the ''local-interest exception'' to the NLRA in arguing that state trespass laws allow employers to exclude individuals from their property (Document ID 1938, p. 6–7). The local-interest exception allows states to regulate certain conduct that is arguably NLRA-protected without being preempted by the NLRA. See *Loc. 926 Int'l Union of Operating Eng'rs* v. *Jones,* 460 U.S. 669, 676 (1983). This exception typically applies when the state regulates ''threats to public order such as violence, threats of violence, intimidation and destruction of property [or] acts of trespass.'' See *Pa. Nurses Ass'n* v. *Pa State Educ. Ass'n,* 90 F.3d 797, 803 (3d Cir. 1996) (collecting cases). These cases are inapposite here both because they do not arise under the OSH Act and deal solely with the actions of private parties such as labor organizations.

Under the final rule, an authorized employee representative would accompany the CSHO, a government official, for the purpose of aiding a lawful inspection under the OSH Act. Moreover, courts apply the local-interest exception when, among other factors, the conduct at issue is only a ''peripheral concern'' of the NLRA. See *Loc. 926,* 460 U.S. at 676. Application of the exception here with respect to the OSH Act would be inappropriate because the right under section 8(e) for an authorized employee representative to accompany the CSHO is intended to increase the effectiveness of the walkaround inspection, an essential element of the OSH Act's enforcement scheme. Thus it is ''one of the key provisions'' of the Act. See Subcomm. on Lab. of the S. Comm. on Lab. and Pub. Welfare, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 430 (Comm. Print 1971).

3. Fifth Amendment Issues

Some commenters argued that the rule constitutes a *per se* taking under the Fifth Amendment by allowing employee representatives to be non-employees (see, *e.g.,* Document ID 0043, p. 2–4; 0168, p. 3–4; 1768, p. 7–8; 1779, p. 2–3; 1952, p. 8–9; 1976, p. 18). These

commenters asserted that the rule will deny employers the right to exclude unwanted third parties from their property (see, *e.g.,* Document ID 0043, p. 3; 1952, p. 8–9; 1976, p. 18). Under the Fifth Amendment's Takings Clause, the government must provide just compensation to a property owner when the government physically acquires private property for a public use. See *Tahoe-Sierra Pres. Council,* 535 U.S. at 321. However, the Supreme Court has recognized that ''[b]ecause a property owner traditionally [has] had no right to exclude an official engaged in a reasonable search, government searches that are consistent with the Fourth Amendment and state law cannot be said to take any property right from landowners.'' *Cedar Point Nursery,* 141 S. Ct. at 2079. Despite this important distinction, commenters raised various arguments in support of their assertion that a taking will occur, focusing on the identity of the employee representative and the nature of their activity onsite.

For example, some commenters asserted that a *per se* taking would occur because the rule authorizes a third party who is not a government official to access private property (see, *e.g.,* Document ID 0168, p. 3–4; 1952, p. 8–9; 1976, p. 18). OSHA's rule provides that employees can select either a third party or another employee of the employer to accompany the CSHO. However, only the CSHO, as the government official, will conduct the inspection. Contrary to the argument made by some commenters (see, *e.g.,* Document ID 1768, p. 8), OSHA is not delegating its inspection authority to third parties. The purpose of employee and employer representation during the walkaround is to aid—not conduct—OSHA's inspection. See 29 U.S.C. 657(e). If OSHA is engaged in a reasonable search under the Fourth Amendment, the mere presence of such a third-party employee representative does not result in a taking. See *Bills,* 958 F.2d at 703 (noting that a third party's entry onto subject's private property may be ''justified if he had been present to assist the local officers'').

Other commenters argued that the rule conflicts with the Supreme Court's decision in *Cedar Point Nursery* because it would allow union representatives to accompany the CSHO (see, *e.g.,* Document ID 0043, p. 2–3; 1952, p. 8–9; 1976, p. 18–19). In *Cedar Point Nursery,* the Supreme Court invalidated a California regulation that granted labor organizations a ''right to take access'' to an agricultural employer's property for the sole purpose of soliciting support for unionization. 141 S. Ct. at 2069, 2080. The Supreme Court held that the regulation appropriated a right to invade the growers' property and therefore constituted a *per se* physical taking. Id. at 2072. The Court reasoned that ''[r]ather than restraining the growers' use of their own property, the regulation appropriates for the enjoyment of third parties the owners' right to exclude.'' Id. The circumstances in *Cedar Point Nursery* are not present in this rule, however. *Cedar Point Nursery* involved a regulation that granted union organizers an independent right to go onto the employer's property for purposes of soliciting support for the union for up to three hours per day, 120 days per year. This rule does not. Rather, consistent with section 8(e) of the OSH Act, this rule—like the regulation that has been in effect for more than fifty years—recognizes a limited right for third parties to ''accompany'' CSHOs during their lawful physical inspection of a workplace solely for the purpose of aiding the agency's inspection.

Additionally, the Supreme Court in *Cedar Point Nursery* stated that ''many government-authorized physical invasions will not amount to takings because they are consistent with longstanding background restrictions on property rights.'' Id. at 2079. ''For example, the government owes a landowner no compensation for requiring him to abate a nuisance on his property, because he never had a right to engage in the nuisance in the first place.'' Id. Here, OSHA's rule will not constitute a physical taking because, as discussed in Section IV.D.2, Fourth Amendment Issues, OSHA's inspections are conducted in accordance with the Fourth Amendment and the OSH Act. Unlike the union organizers in *Cedar Point Nursery,* the presence of third-party employee representatives on the employer's property will be strictly limited to accompanying the CSHO during a lawful physical inspection of the workplace and their sole purpose for being there will be to aid the inspection.

One commenter stated OSHA's rule does not fit within any of the Supreme Court's recognized exceptions permitting government-authorized physical invasions because (1) access by third parties is not rooted in any ''longstanding background restrictions on property'' and ''these searches [do not] comport with the Fourth Amendment,'' and (2) ''even if the [rule] could be characterized as a condition imposed in exchange for a benefit, the third-party tag-along is not germane to risks posed to the public'' (Document 1768, p. 8) (citing *Cedar Point Nursery,* 141 S. Ct. at 2079). First, as discussed in Section IV.D.2, Fourth Amendment Issues, an OSHA inspection can be reasonable under the Fourth Amendment even when it is conducted with the aid of a third-party. See, *e.g., Sparks,* 265 F.3d at 831–32 (finding warrantless search conducted with the aid of a civilian reasonable under the Fourth Amendment). Second, in *Cedar Point Nursery,* the Supreme Court stated that the government may require property owners to cede a right of access as a condition of receiving certain benefits, such as in government health and safety inspection regimes, without causing a taking so long as ''the permit condition bears an 'essential nexus' and 'rough proportionality' to the impact of the proposed use of the property,'' *Cedar Point Nursery,* 141 S. Ct. at 2079–2080 (citing *Dolan* v. *City of Tigard,* 512 U.S. 374, 386, 391 (1994) and *Koontz* v. *St. Johns River Water Management Dist.,* 570 U.S. 595, 599 (2013)). However, OSHA is not required to demonstrate the elements of ''essential nexus'' and ''rough proportionality'' because it does not condition the grant of any benefit such as a grant, permit, license, or registration on allowing access for any of its reasonable safety and health inspections.

Accordingly, OSHA has determined that this rule does not constitute a taking requiring just compensation under the Fifth Amendment. OSHA inspections conducted under this rule will be consistent with the Fourth Amendment and any third-party employee representatives that accompany the CSHO on their physical inspection of the workplace will be on the employer's premises solely to aid the inspection.

4. Due Process Issues

Some commenters argued that this rule would deprive employers of due process because of substantive or procedural deficiencies or because it is unconstitutionally vague (see, *e.g.,* Document ID 1762, p. 4; 1776, p. 5; 1942, p. 4; 1955, p. 3, 8–9; 8124). For example, NRF asserted, ''A CSHO's decision to authorize a third-party representative to enter an employer's property is a violation of substantive due process that an employer has no pre-entry/pre-enforcement means to address.'' (Document ID 1776, p. 5). Other commenters asserted that employers' due process rights are violated because there are not procedures for employers to challenge the CSHO's ''good cause'' and ''reasonably necessary'' determination, object to the selection of employees' third-party walkaround representative, or verify the third-party representative's qualifications before the third party

enters their property (see, *e.g.,* Document ID 1776, p. 2, 5, 6–7; 1955, p. 3, 8–9). OSHA does not find any merit to commenters' due process challenges.

NRF inaccurately asserts that permitting a third-party to enter an employer's property violates that employer's substantive due process rights (see Document ID 1776, p. 5). As discussed in Section IV.D.3, Fifth Amendment Issues, OSHA inspections do not result in the deprivation of property. Instead, they are law enforcement investigations to determine whether employers at the worksite are complying with the OSH Act and OSHA standards. And, as explained in Section IV.D.2, Fourth Amendment Issues, a third party may accompany OSHA during its inspection for the purpose of aiding such inspection, just as other law enforcement officials do, depending on the nature of the inspection.

This rule also does not change employers' ability to object to employees' choice for their walkaround representative. Employees have a right under section 8(e) of the Act to a walkaround representative, and, if an employer has concerns about the particular representative that employees choose, nothing in the Act or the rule precludes employers from raising objections to the CSHO. The CSHO may consider those objections when conducting an inspection in accordance with Part 1903, including when judging whether good cause has been shown that the employee representative's participation is reasonably necessary to conduct an effective and thorough inspection of the workplace.

Furthermore, as discussed in Section IV.D.2, Fourth Amendment Issues, OSHA's inspections are conducted with the employer's consent or via a warrant. If an employer denies or limits the scope of its consent to OSHA's entry because it does not believe a particular third party should enter, the CSHO will consider the reason(s) for the employer's objection. The CSHO may either find merit to the employer's objection or determine that good cause has been shown that the third party is reasonably necessary to a thorough and effective inspection. In the latter scenario, the CSHO would follow the agency's procedures for obtaining a warrant to conduct the physical inspection, and a judge would consider whether the search, including the third-party's accompaniment, is reasonable under the Fourth Amendment. See, *e.g., Matter of Establishment Inspection of Caterpillar Inc.,* 55 F.3d at 336 (employer objected to striking employee serving as walkaround representative and denied OSHA entry, moved to quash OSHA's warrant granting entry, and then appealed district court decision denying employer's motion). Neither NRF nor the Construction Industry Safety Coalition have suggested that this process is constitutionally inadequate.

Other commenters argued that the rule is unconstitutionally vague. For instance, the Construction Industry Safety Coalition argues the rule ''does not provide requisite notice of what is required to comply and will be unconstitutionally vague on its face and as applied.'' (Document ID 1955, p. 3, 8–9). Several commenters argued ''the regulated community has no notice as to what the standards, procedures, and their rights will be under this proposed regulation and thus cannot meaningfully comment.'' (Document ID 1779, p. 2; see also 1751, p. 2; 1942, p. 2).

Constitutional due process requires regulations to be sufficiently specific to give regulated parties adequate notice of the conduct they require or prohibit. See *Freeman United Coal Mining Co.* v. *Fed. Mine Safety & Health Review Comm'n,* 108 F.3d 358, 362 (D.C. Cir. 1997) (''[R]egulations will be found to satisfy due process so long as they are sufficiently specific that a reasonably prudent person, familiar with the conditions the regulations are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations require.''); see also *AJP Const., Inc.* v. *Sec'y of Lab.,* 357 F.3d 70, 76 (D.C. Cir. 2004) (quoting *Gates & Fox Co.* v. *OSHRC,* 790 F.2d 154, 156 (D.C. Cir. 1986)) (''If, by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform, then the agency has fairly notified a petitioner of the agency's interpretation).

Contrary to CISC's assertion, this rule is not unconstitutionally vague. As explained in Section IV.F, Administrative Issues, this rule provides greater clarity than the prior regulation by more explicitly stating that employees' walkaround representative may be a third party and that third parties are not limited to the two examples in the previous regulation. Accordingly, OSHA has determined that this rule does not infringe on employers' due process rights.

5. Tenth Amendment Issues

Some commenters raised Tenth Amendment concerns (see Document ID 1545; 7349). For instance, one commenter stated they oppose the rule ''because it violates the 10th amendment of the US Constitution, which reserves all powers to the states and the people that are not explicitly named in the Constitution'' (Document ID 7349). Another commenter expressed concern over ''federal law overruling established state law concerning OSHA rules'' (Document ID 1545). However, OSHA's authority to conduct inspections and to issue inspection-related regulations is well-settled and has been long exercised. See 29 U.S.C. 657(e) (describing the Secretary's authority to promulgate regulations related to employer and employee representation during an inspection); 657(g)(2) (describing the Secretary of Labor's and the Secretary of Health and Human Services' authority to ''each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment''); *Barlow's,* 436 U.S. at 309 (section 8(a) of the OSH Act ''empowers agents of the Secretary of Labor (Secretary) to search the work area of any employment facility within the Act's jurisdiction.''). Accordingly, OSHA concludes that this rule does not violate the 10th Amendment. For a discussion on how this rule will affect states, see Sections VII, Federalism and VIII, State Plans.

E. National Labor Relations Act and Other Labor-Related Comments

Several commenters opposed to the proposed rule discussed the National Labor Relations Act (NLRA). These commenters mainly asserted that the rule circumvents or conflicts with the NLRA by allowing union officials to be employee representatives in non-union workplaces (see, *e.g.,* 1933, p. 4; 1955, p. 7–8). For example, commenters argued that under the NLRA, a non-union employer generally has the right to exclude union representatives engaged in organizing activity from their property (see, *e.g.,* Document ID 1938, p. 6–7; 1955, p. 6–7; 1976, p. 10–11). The Chamber of Commerce also contended that non-union employers that allow a union official to serve as employees' walkaround representative could violate section 8(a)(2) of the NLRA by appearing to show favoritism to that union (Document ID 1952, p. 7). In addition, some commenters argued that representation rights under the NLRA are based on the concept of majority support, and therefore, a CSHO cannot allow an individual who lacks support from a majority of employees to serve as the employees' walkaround

representative during OSHA's inspection (see, *e.g.,* Document ID 1939, p. 3; 1976, p. 8).

Relatedly, several commenters, including the Utility Line Clearance Safety Partnership, Coalition for Workplace Safety, and National Association of Manufacturers asserted that determining whether a third party is an authorized representative of employees is exclusively under the jurisdiction of the National Labor Relations Board (NLRB) (Document ID 1726, p. 4–5; 1938, p. 3; 1953, p. 5). The Coalition for Workplace Safety also argued that the NLRB alone has the authority to address the relationship between employees and their authorized representative and that ''OSHA does not have the expertise or authority to meddle in the relationship'' between employees and any authorized representative (Document ID 1938, p. 3–4). Lastly, some commenters raised the question of whether the rule would allow employees of one union to select a different union as their walkaround representative and asserted that this would conflict with the NLRA's requirement that a certified union be the exclusive representative of all employees in the bargaining unit (see, *e.g.,* Document ID 1976, p. 9).

Conversely, other commenters, such as a group of legal scholars who support the proposed rule, denied that the rule implicated the NLRA and cited the legislative history of the OSH Act to show that the phrase ''for the purpose of aiding such inspection'' was added to section 8(e) of the OSH Act to limit potential conflict with the NLRA (Document ID 1752, p. 3–4). U.S. Representative Robert ''Bobby'' Scott compared section 8(e) of the OSH Act with section 103(f) of the Mine Safety and Health Act (Mine Act), which authorizes employee representatives during inspections, and noted that Federal courts of appeals have determined that allowing non-employee representatives under the Mine Act does not violate the NLRA (Document ID 1931, p. 9–10, citing *Thunder Basin Coal Co.* v. *FMSHRC,* 56 F.3d 1275 (10th Cir. 1995) and *Kerr-McGee Coal Corp.* v. *FMSHRC,* 40 F.3d 1257 (D.C. Cir. 1994)). The American Federation of Teachers, who commented in support of the proposed rule, noted that disallowing union representatives in unionized workplaces would be incongruent with the NLRA because union representatives are the legally authorized representatives of employees concerning terms and conditions of employment under the NLRA (Document ID 1957, p. 2).

OSHA concludes that the rule does not conflict with or circumvent the NLRA because the NLRA and the OSH Act serve distinctly different purposes and govern different issues, even if they overlap in some ways. Cf. Representative of Miners, 43 FR 29508 (July 7, 1978) (meaning of the word ''representative'' in the Mine Act ''is completely different'' than the meaning of the word in the NLRA). The NLRA concerns ''the practice and procedure of collective bargaining'' and ''the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.'' 29 U.S.C. 151. To effectuate this, the NLRB conducts elections to certify and decertify unions and investigates alleged unfair labor practices, among other activities. See 29 U.S.C. 159.

In contrast, the purpose of the OSH Act is to ''assure . . . safe and healthful working conditions.'' 29 U.S.C. 651. To effectuate this purpose, the OSH Act authorizes OSHA to conduct safety and health inspections and mandates that ''a representative authorized by [an employer's] employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of [the workplace] for the purpose of aiding such inspection.'' 29 U.S.C. 657(e). The NLRA contains no analogous provision. Further, the OSH Act does not place limitations on who can serve as the employee representative, other than requiring that the representative aid OSHA's inspection, and the OSH Act's legislative history shows that Congress ''provide[d] the Secretary of Labor with authority to promulgate regulations for resolving this question.'' 88 FR 59825, 59828–59829 (quoting Legislative History of the Occupational Safety and Health Act of 1970, at 151 (Comm. Print 1971)). As such, OSHA—not the NLRB—determines if an individual is an authorized representative of employees for the purposes of an OSHA walkaround inspection. OSHA's FOM instructs that in workplaces where workers are represented by a certified or recognized bargaining agent, the highest-ranking union official or union employee representative on-site shall designate who will participate as the authorized representative during the walkaround. OSHA Field Operations Manual, CPL 2–00–164, Chapter 3, Section VII.A.I. While some commenters questioned OSHA's expertise and authority to make such determinations, OSHA has the statutory and regulatory authority to determine who is an authorized walkaround representative and has done so for more than fifty years. See 29 U.S.C. 657(e), (g)(2); 29 CFR 1903.8(a)–(d).

Because of the different nature of each statute and the different activities they govern, OSHA does not find any merit to the arguments about potential conflicts or circumvention of the NLRA. For example, some commenters pointed to Supreme Court cases, including *NLRB* v. *Babcock & Wilcox Co.,* 351 U.S. 105 (1956) and *Lechmere, Inc.* v. *NLRB,* 502 U.S. 527 (1992), for the proposition that employers have a right to exclude unions from their property. (see, *e.g.,* Document ID 1952, p. 8–9; 1955, p. 7; 1976, p. 9–11). However, those decisions did not bar unions from ever accessing worksites for any reason. Instead, the decisions concerned unions' ability to access employer property for the specific purpose of informing non-union employees of their rights under NLRA Section 7 to form, join, or assist labor organizations. See *Lechmere, Inc.,* 502 U.S. at 538 (''only where such access [to non-union employees by union organizers] is infeasible that it becomes necessary and proper to take the accommodation inquiry to a second level, balancing the employees' and employers' rights''); *Babcock,* 351 U.S. at 114 (''[The NLRA] does not require that the employer permit the use of its facilities for organization when other means are readily available''). In reaching these decisions, the Supreme Court noted that the NLRA affords organizing rights to *employees* and not to unions or their nonemployee organizers, and therefore, the employer is generally not required to admit nonemployee organizers onto their property. *Lechmere,* 502 U.S. at 532; *Babcock,* 351 U.S. at 113.

Conversely, the OSH Act explicitly affords employees the right to have a representative accompany OSHA ''for the purpose of aiding'' the inspection and does not require that representative to be an employee of the employer. 29 U.S.C. 657(e). If employees in a non-union workplace choose a nonemployee representative affiliated with a union as their walkaround representative during OSHA's inspection, OSHA will allow that individual to be the employees' walkaround representative only if good cause has been shown that the individual is reasonably necessary to the conduct of an effective and thorough inspection. That third-party walkaround representative will be onsite solely to aid OSHA's inspection. If the representative deviates from that role, OSHA's existing regulations afford the

CSHO the authority to terminate the representative's accompaniment. See 29 CFR 1903.8(d).

Additionally, in interpreting the Mine Act, which contains an analogous employee representative walkaround right, 30 U.S.C. 813(f), courts have rejected arguments that allowing a nonemployee union representative to accompany a Mine Safety and Health Administration (MSHA) investigator as the miners' representative during an inspection violates an employer's rights under the NLRA. See *U.S. Dep't of Lab.* v. *Wolf Run Mining Co.,* 452 F.3d 275, 289 (4th Cir. 2006) (''While a union may not have rights to enter the employer's property under the NLRA, miners do have a right to designate representatives to enter the property under the Mine Act.''); *Thunder Basin Coal Co.,* 56 F.3d at 1281 (rejecting argument that allowing non-union workers to designate union representatives for MSHA inspections violated *Lechmere*); see also *Kerr-McGee Coal Corp.,* 40 F.3d at 1265 (rejecting the *Lechmere* standard because the Mine Act ''defines the rights of miners' representatives and specifies the level of intrusion on private property interests necessary to advance the safety objectives of the Act.''). Accordingly, NLRA case law does not prevent employees from authorizing nonemployee representatives under the OSH Act, including those affiliated with unions.

In addition, comments regarding the NLRA's requirements for majority support are misplaced. One commenter argued that because an employer can only bargain with a union representative who was designated or selected by a ''majority of the employees'' under the NLRA, unions must also have majority support to be the employees' representative under the OSH Act (Document ID 1976, p. 6–11). Relatedly, this commenter suggested that the showing to demonstrate majority support is higher under the OSH Act because the OSH Act does not exclude as many individuals from the definition of ''employee'' as the NLRA (Document ID 1976, p. 9). However, the OSH Act contains no requirement for majority support, nor has OSHA ever imposed one in determining who is the employees' walkaround representative. Cf. OSHA Field Operations Manual, Chapter 3, Section VII.A (noting that members of an established safety committee can designate the employee walkaround representative). Furthermore, the NLRA's requirements for majority support would not apply to a union representative accompanying OSHA in a non-union workplace as this representative would not be engaged in collective bargaining. Their purpose, like any other type of employee representative, is to aid OSHA's inspection.

This rule also does not conflict with sections 7 and 8(a)(2) of the NLRA, contrary to the assertions of several commenters (see, *e.g.,* Document ID 1776, p. 9–10; 1946, p. 6; 1952, p. 7). Section 7 of the NLRA grants employees ''the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection'' as well as ''the right to refrain from any or all of such activities[.]'' 29 U.S.C. 157. This rule has no effect on employees' section 7 right to engage in or refrain from concerted activity, contrary to the assertions of NRF that this rule violates employees' section 7 rights by denying them a right to vote for or against an authorized representative (Document ID 1776, p. 9–10). Again, this rule has no effect on employees' rights under the NLRA to select a representative ''for the purposes of collective bargaining.'' 29 U.S.C. 159(a). The purpose of the employees' walkaround representative is to aid OSHA's inspection, not engage in collective bargaining.

One commenter raised several hypothetical situations that could occur and asked whether these situations would be considered unfair labor practices under sections 8(a)(1) and 8(b)(1)(A) of the NLRA (Document ID 1976, p. 9). The question of whether certain conduct could violate another law is beyond the scope of this rulemaking and OSHA's authority. The NLRB, not OSHA, determines whether such conduct would constitute an unfair labor practice.

OSHA has determined this rule does not conflict with section 8(a)(2) of the NLRA, which prohibits employers from ''dominat[ing] or interfer[ing] with the formation or administration of any labor organization or contribut[ing] financial or other support to it[.]'' 29 U.S.C. 158(a)(2). NRF asserted that an employer providing a union organizer with access to its property during an OSHA inspection may be providing unlawful support to the union in violation of 8(a)(2) of the NLRA (Document ID 1952, p. 7). However, employees, and not the employer, select their representative, and the CSHO must also determine that good cause has been shown that this representative is reasonably necessary. Given that OSHA, not an employer, has the ultimate authority to determine which representatives may accompany the CSHO on the walkaround inspection, see 29 CFR 1903.8(a)–(d), an employer that grants access to an employee representative affiliated with a union as part of an OSHA workplace inspection would not run afoul of section 8(a)(2) of the NLRA, even assuming that such access could conceivably implicate Section 8(a)(2).

Commenters also raised concerns about unionized employees selecting a different union to accompany OSHA because the NLRA recognizes certified representatives as the ''exclusive representative'' of the bargaining unit employees (see, *e.g.,* Document ID 1976, p. 9). Other commenters raise concerns that the final rule inserts OSHA into ''jurisdictional disputes between unions'' (Document ID 11220; 11211). If employees at a worksite already have a certified union, OSHA does not intend to replace that union with a different walkaround representative. According to the FOM, ''the highest ranking union official or union employee representative onsite shall designate who will participate in the walkaround.'' OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Section VII.A.1. However, the CSHO may permit an additional employee representative (regardless of whether such representative is affiliated with a union) if the CSHO determines the additional representative is reasonably necessary to the conduct of an effective and thorough inspection and will further aid the inspection. See 29 CFR 1903.8(a), (c).

Finally, even where the two statutes overlap at times, such as both the NLRA and OSH Act protecting employees' right to voice concerns to management about unsafe or unhealthful working conditions, there is no conflict between the two statutes when employees authorize a third-party affiliated with a union to accompany a CSHO on an inspection of a non-union workplace. As evidence that this intersection of statutes does not lead to conflict, OSHA and the NLRB have had Memoranda of Understanding (MOUs) since 1975 to engage in cooperative efforts and interagency coordination. Accordingly, OSHA finds no merit to the arguments that this regulation conflicts or circumvents the NLRA.

Comments Related to Labor Disputes, Organizing, and Alleged Misconduct

In addition to comments about the NLRA, some commenters expressed concerns that, by allowing a union representative to accompany OSHA at a non-union worksite, OSHA would give the appearance of endorsing a union

representative in a particular worksite or endorsing unions generally and thus departing from OSHA's longstanding policy of neutrality in the presence of labor disputes (see, *e.g.,* Document ID 1976, p. 24–25; 1946, p. 6–7). Another commenter claimed that OSHA's 2023 MOU with the NLRB could pressure CSHOs ''to allow non-affiliated union representatives to join their walkaround inspections'' (Document ID 1762, p. 5).

These concerns are unfounded. OSHA does not independently designate employee representatives. Employees select their representative, and OSHA determines if good cause has been shown that the individual is reasonably necessary to the inspection. That inquiry does not depend on whether the representative is affiliated with a union. And a finding of good cause does not indicate that OSHA is favoring unions. Additionally, the FOM provides guidance to CSHOs to avoid the appearance of bias to either management or labor if there is a labor dispute at the inspected workplace. See OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Sections IV.G.3, IV.H.2.c (''Under no circumstances are CSHOs to become involved in a worksite dispute involving labor management issues or interpretation of collective bargaining agreements''); (''During the inspection, CSHOs will make every effort to ensure that their actions are not interpreted as supporting either party to the labor dispute.''). Neutrality has been OSHA's longstanding policy, and OSHA rejects arguments that the final rule displays favoritism towards unions or will improperly pressure CSHOs to allow authorized representatives.

Finally, OSHA's MOU with the NLRB relates to interagency cooperation and coordination, and there is no basis for assuming that this interagency cooperation will interfere with OSHA inspections or neutrality. As explained previously, third-party employee representatives will accompany the CSHO on an inspection only when the CSHO determines good cause has been shown that the third-party employee representatives are reasonably necessary to an effective and thorough inspection. OSHA concludes that existing safeguards and the requirement for third party representatives to be reasonably necessary to the inspection will prevent such an appearance of bias or endorsement of unionization or particular unions.

Commenters in opposition to the proposed rule also voiced the possibility that third-party employee representatives from unions or other advocacy organizations would use the walkaround inspection for organizing (see, *e.g.,* Document ID 0021; 0040, p. 3). The National Federation of Independent Business discussed these concerns and alleges that third-party employee representatives ''would gain access to information otherwise not available and could interact with employees in a way that could facilitate union organizing campaigns, political activity, mischief, and litigation'' (Document ID 0168 p. 7). The North American Insulation Manufacturers Association claimed that ''unions would monitor OSHA complaint filings, contact employees, and attempt to receive authorization to attend walkarounds so they can access the site to solicit for employee support'' (Document ID 1937, p. 5).

Additionally, some commenters asserted that permitting union representatives in workplaces without a collective bargaining agreement is part of an '' 'all-of-government' approach to union expansion'' (see, *e.g.,* Document ID 1776, p. 2). Similarly, some commenters argued that this rule is ''designed to give union supporters access to company facilities that they would otherwise not be granted'' and that it ''promote[s] unions and collective bargaining'' (Document ID 0033; 1030). Certain commenters in support of the proposed believed that the proposed rule was about ensuring union representation in inspected workplaces (see, *e.g.,* Document ID 0056; 10725).

Alleged union misconduct is another concern of several commenters in opposition to the proposed rule. NRF alleges that they ''have learned of anecdotal incidents wherein union business agents have relationships with CSHOs from some local area offices'' and that these CSHOs have ''pursued unjustifiable citations against companies during critical times'' (Document ID 1776, p. 6–7). Some commenters also expressed concerns that third-party representatives affiliated with one union would ''poach'' employees from employees' existing union (see, *e.g.,* Document ID 11275). Other comments raise misconduct of third parties generally as a basis for their opposition to the proposed rule. For example, the American Road & Transportation Builders Association (ARTBA) claims ''ARTBA members have shared past experiences with bad actors attempting to access their job sites for reasons unrelated to worker safety and health'' (Document ID 1770, p. 3).

NRF referenced amendments to the NLRA and the Landrum-Griffin Act, also known as the Labor-Management Reporting and Disclosure Act (LMRDA), which, according to NRF, ''provides a mechanism through which employees and employers can challenge the status of an Authorized Representative'' (Document ID 1776, p. 6). NRF asserted that this ''pre-enforcement mechanism'' allows ''an appeal and remedy before employees and employers must submit to representation by the Authorized Representative.'' (Document ID 1776, p. 6). NRF asserted that the policy rationale of limiting union misconduct was behind the amendments to the NLRA and passage of the LMRDA and suggested that the final rule should include similar safeguards to further the same policy rationale (Document ID 1776, p. 6).

U.S. Representative Virginia Foxx asserted that unions ''weaponized the OSHA inspection process'' after OSHA issued the Sallman letter, referencing four inspections where a representative affiliated with a union accompanied OSHA as the employee walkaround representative (Document ID 1939, p. 2–3). One commenter asserted that this rule could lead to compromised inspections and quoted an unnamed ''Occupational Safety and Operational Risk Management Professional'' who claimed to witness inspections where union officials allegedly argued with CSHOs and stated that CSHOs could not write a citation without the union's consent (Document ID 11506). No information about the date, location, employer, union, OSHA staff, or the witness was included.

Some commenters, including U.S. Senator Bill Cassidy, MD, called attention to the potential that the ''presence of a union organizer, especially in a non-union workplace, could very well cause an employer to deny OSHA access'' (Document ID 0021, p. 2; see also 1772, p. 1). Senator Cassidy stated that this would delay the inspection while OSHA seeks a warrant, which would be detrimental to worker safety and health (Document ID 0021, p. 1–2; see also 1772, p. 1). Winnebago Industries, Inc. stated their concerns about worker privacy when a third-party union representative accompanies an OSHA inspector (Document ID 0175, p. 2).

Those in support of the proposed rule, including UFCW, stated that third-party representatives from their union have not used OSHA inspections as pretext for organizing (Document ID 1023, p. 2). A former director of the safety and health program for AFSCME stated that when he served as a third-party representative in workplaces that AFSCME was attempting to organize that ''no union issues were raised'' (Document ID 1945, p. 3). Representative Scott, citing to a

prominent union organizer, noted that union organizing was unlikely to happen during a walkaround inspections because of the need for in-depth, one-on-one conversations between the organizer and workers during a campaign (Document ID 1931, p. 10–11). Representative Scott concluded that walkaround inspections do not allow for such conversations.

In response to these comments both for and against the rule, OSHA first reiterates that the purpose of this rulemaking is to allow CSHOs the opportunity to draw upon the skills, knowledge, or experience of third-party representatives and ensure effective inspections, not to facilitate union organizing or ensure union representation. OSHA strongly disagrees with NRF's suggestion that CSHOs have pursued unjustifiable citations due to union influence. Further, NRF provided no specific details to enable OSHA to evaluate these allegations. For the same reason, OSHA finds little support for the allegation that CSHOs have been improperly influenced by union officials and that this rule will lead to further improper influence. Assertions of general misconduct of third parties raised by commenters such as ARTBA do not appear linked to OSHA's inspections and lack specific details.

OSHA also disagrees with the notion that this rule allows the OSHA inspection to be ''weaponized.'' Because any third-party representative, including those from unions or advocacy organizations, would need to be reasonably necessary for a thorough and effective inspection, the OSHA inspection cannot be ''weaponized'' against employers. Further, OSHA complaints are not publicly available, so is there no way for a union to ''monitor'' them and contact employees, contrary to the North American Insulation Manufacturers Association's claim.

While third-party employee walkaround representatives may observe workplace conditions, they only have access to this information for the specific purpose to aid an OSHA inspection. And, as explained above, they are not permitted to engage in any conduct that interferes with a fair and orderly inspection. See 29 CFR 1903.8(d). If a representative engages in conduct that interferes with a fair and orderly inspection, such as union organizing or any type of misconduct, OSHA will deny the representative the right of accompaniment and exclude the representative from the walkaround inspection. See 29 CFR 1903.8(d). CSHOs have extensive experience maintaining fair and orderly inspections, and, given the CSHO's command over the inspection, OSHA finds that union organizing, political activity, or misconduct are unlikely during a walkaround. Furthermore, any union solicitation, such as handing out union authorization cards, would not aid the inspection and would be grounds to deny accompaniment.

OSHA concludes that this rule, along with existing procedural and regulatory safeguards, are adequate to protect inspections from interference, union organizing, or misconduct. See 29 CFR 1903.7(d); 1903.8(a)–(d). Additionally, as discussed in Section IV.A, The Need for and Benefits of Third-Party Representation, any inspection with a third-party representative is subject to OSHA regulations on the protection of trade secrets. See 29 CFR 1903.9(a)–(d).

OSHA also disagrees with Winnebago Industries' suggestion that allowing authorized third-party representatives from unions will have a noticeable impact on worker privacy. Since 1971, OSHA has permitted employees to have a third-party walkaround representative, and no comment has provided a specific example of when a worker's privacy was adversely impacted by the actions of a third-party representative. In fact, one commenter noted that a representative selected by workers can offer workers more privacy to reveal issues away from surveillance by an employer (Document ID 1728, p. 3–4).

OSHA disagrees with NRF's comment that this rule should include procedures similar to the NLRB ''before employees and employers must submit to representation by the Authorized Representative'' (Document ID 1776, p. 6). It is unknown exactly which mechanism this comment is referring to, such as situations where an employer declines to sign an election agreement and proceeds to a formal hearing before an NLRB Hearing Officer or situations where employees vote against a union in an NLRB-held election. Under the NLRA, an employer has a limited right to challenge a candidate bargaining representative, pre-election, by filing a petition with the NLRB. See 29 U.S.C. 159(c)(1)(B).

In either case, the NLRB processes for union recognition are completely inapposite to the framework of the OSH Act. First, OSHA inspections are to be conducted ''without delay,'' 29 U.S.C. 657(a)(1), and delaying an inspection to hold a hearing on who can be the employees' walkaround representative is antithetical to section 8(a) of the OSH Act. Second, as explained previously, nothing in the OSH Act requires majority support for a representative the way the NLRA does. Third, unlike the NLRA, the OSH Act does not include a process by which employers object to employees' representative—or for employees to object to the employer's representative, for that matter. Nevertheless, employers may raise concerns related to the authorized employee representative with the CSHO, who will address them at the worksite. Where the employer's concerns cannot be resolved, the CSHO will construe the employer's continued objection as to the authorized employee representative as a refusal to permit the inspection and shall contact the Area Director, per Chapter 3, Section IV.D.2 of the FOM. OSHA will obtain a warrant when necessary to conduct its inspections. See *Barlow's,* 436 U.S. at 313; see also 29 CFR 1903.4(a).

Finally, because any third-party walkaround representative is subject to the good cause and reasonably necessary requirement, OSHA anticipates that the vast majority of employers will not deny entry simply because the employees' walkaround representative is a third party. However, OSHA will obtain a warrant when necessary to conduct its inspections. See *Barlow's,* 436 U.S. at 313; *see also* 29 U.S.C. 657(a)(1)–(2); 29 CFR 1903.4(a). In situations where the employer's past practice either implicitly or explicitly puts the Secretary on notice that a warrantless inspection will not be allowed, OSHA may seek an anticipatory warrant in order to conduct its inspection without delay. See 29 CFR 1903.4(b)(1). As such, OSHA does not believe that this rule will result in further delays that would be detrimental to worker safety and health.

F. Administrative Issues.

1. Administrative Procedure Act

Some commenters argued that the proposal conflicted with the Administrative Procedure Act (APA) (See, *e.g.,* Document ID 1776, p. 8, 10; 1953, p. 1, 3, 5; 1954, p. 2, 4). The APA requires an agency to provide notice of a proposed rulemaking and to include ''either the terms or substance of the proposed rule or a description of the subjects and issues involved.'' 5 U.S.C. 553(b)(3). A final rule must be a logical outgrowth of the proposed rule and must allow affected parties to anticipate that the final rule was possible. See *Allina Health Servs.* v. *Sebelius,* 746 F.3d 1102, 1107 (D.C. Cir. 2014). In issuing a final rule an ''agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' '' *Motor Vehicle Mfrs. Ass'n of*

U.S., Inc. v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines* v. *United States,* 371 U.S. 156, 168 (1962)).

Several commenters asserted that the proposed rule was arbitrary and capricious under the APA because it was inconsistent with the OSH Act, other OSHA regulations, lacked a rational basis for adoption, lacked sufficient clarity on third-party qualifications, invited chaos, or because it gave CSHOs too much discretion (see, *e.g.,* Document ID 0168, p. 4–6; 1754, p. 2–3; 1776, p. 2–3; 1782, p. 3–5; 1952, p. 12–13; 1953, p. 5; 1954, p. 4). As discussed below, OSHA has determined that this rule is consistent with APA and OSH Act rulemaking requirements.

a. Consistency With the OSH Act

Several commenters asserted that the proposed rule is arbitrary and capricious because it was not a valid construction of the OSH Act (see, *e.g.,* Document ID 0168, p. 6; 1946, p. 4–5; 1952, p. 11–13). Some commenters asserted that the term ''authorized employee representative'' in section 8(e) of the OSH Act is limited to employees of the employer (see, *e.g.,* Document ID 1768, p. 4; 11506). Others argued that the term is reserved for unions that represent employees for collective bargaining purposes (see, *e.g.,* Document ID 1952, p. 6–7; 10808). Commenters further argued that defining this term to include all employee walkaround representatives, including non-union third parties, would directly conflict with existing OSHA regulations and procedural rules issued by the Occupational Safety and Health Review Commission (''Commission'') interpreting the same or similar terms (*e.g.,* Document ID 1937, p. 4; 1946 p. 4–5; 1952, p. 6–8, 9–11; 1976, p. 6). OSHA has determined that this regulation is consistent with the plain language and legislative history of the OSH Act and finds that other, unrelated regulations do not require OSHA to limit its interpretation of ''employee representative'' in section 8(e) of the OSH Act to employees of the employer or unions that represent employees for collective bargaining purposes.

As explained in Section III, Legal Authority, the Act does not place restrictions on who can be a representative authorized by employees—other than requiring that they aid the inspection—and permits third parties to serve as authorized employee representatives. See *Matter of Establishment Inspection of Caterpillar Inc.,* 55 F.3d at 338 (''[T]he plain language of § 8(e) permits private parties to accompany OSHA inspectors[.]''); *NFIB* v. *Dougherty,* 2017 WL 1194666, at *12 (''[T]he Act merely provides that the employee's representative must be authorized by the employee, not that the representative must also be an employee of the employer.''). Likewise, nothing in the OSH Act or its legislative history suggests that Congress intended to extend employee accompaniment rights only to unionized workplaces. See Comments of Congressperson William J. Scherle of Iowa, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 1224 (Comm. Print 1971) (''The bill provides that union representatives *or any employee representative* be allowed to accompany inspectors on their plant tours.'') (emphasis added). Section 8(e) uses ''representative authorized by his employees'' and ''authorized employee representative'' as equivalents, and certainly employees can authorize an employee representative to accompany a walkaround inspection even if they are not unionized. There is no reason to think that Congress intended anything more.

Thus, section 8(e)'s plain meaning permits employees to select a walkaround representative, irrespective of whether that representative is employed by the employer, to serve as an ''authorized employee representative.'' Contrary to some commenters' claims, section 8(e) does not limit the scope of authorized employee representatives to ''only lawfully recognized unions'' (Document ID 1952, p. 6). Furthermore, sections 8(e) and 8(g), respectively, expressly authorize the Secretary to issue regulations related to employee and employer representation during OSHA's walkaround inspection as well as ''regulations dealing with the inspection of an employer's establishment.'' 29 U.S.C. 657(e), (g)(2).

Furthermore, as discussed in Section III, Legal Authority, this rule is consistent with Congress's expressed intent because Congress clearly intended to give the Secretary of Labor the authority to issue regulations to resolve the question of who could be an authorized employee representative for purposes of the walkaround inspection. See 29 U.S.C. 657(e); Legislative History of the Occupational Safety and Health Act of 1970, at 151 (Comm. Print 1971) (''Although questions may arise as to who shall be considered a duly authorized representative of employees, the bill provides the Secretary of Labor with authority to promulgate regulations for resolving this question.'').

Other commenters argued that this regulation is consistent with the plain language of the OSH Act (see, *e.g.,* Document ID 1752, p. 1–3; 1969, p. 4). For example, the AFL–CIO argued that the Secretary's interpretation ''is strongly supported by judicial construction of the almost identical provision of the Federal Mine Health and Safety Act of 1977, 30 U.S.C. 813(f)'' (Document ID 1969, p. 4). OSHA agrees.

The Mine Act contains nearly identical language conferring miners the right to have an authorized representative accompany the inspector as the OSH Act. Compare 30 U.S.C. 813(f) (''Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine[.]'') with 29 U.S.C. 657(e) (''Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace[.]''). Courts have long held that this language in the Mine Act does not limit who can be employees' representative. See *Utah Power & Light Co.* v. *Sec'y of Labor,* 897 F.2d 447 (10th Cir. 1990) (Section 103(f) of the Mine Act ''confers upon the miners the right to authorize a representative for walkaround purposes without any limitation on the employment status of the representative.'').

As with the Mine Act, the nearly identical language in the OSH Act ''does not expressly bar non-employees from serving as'' authorized employee representatives. *Kerr-McGee Coal Corp.,* 40 F.3d at 1262. In *Kerr-McGee Coal Corp.,* the D.C. Circuit held that the Secretary's interpretation of the Mine Act's virtually identical language as allowing the ''involvement of third parties in mine safety issues . . . is consistent with Congress's legislative objectives of improving miner health and mine safety.'' Id. at 1263; see also id. (''Obviously, if Congress had intended to restrict the meaning of 'miners' representatives' in the 1977 Act, it could have done so in the statute or at least mentioned its views in the legislative history. It did neither. Consequently, in view of Congress' clear concern about miners' safety, the Secretary's broad interpretation of the term is consistent with congressional objectives.'').

Moreover, Congress gave the Secretary of Labor the authority to issue regulations related to walkaround inspections and to resolve the question of who could be an authorized employee representatives for purposes of section 8(e) of the OSH Act. See 29 U.S.C. 657(e); Legislative History of the Occupational Safety and Health Act of 1970, at 151 (Comm. Print 1971). Given the nearly identical language in section 103(f) of the Mine Act, which was passed shortly after the OSH Act, and the similar purposes of the two statutes, here too the plain language of the OSH Act confers upon employees the right to authorize a representative irrespective of the representative's employment status. See *Smith* v. *City of Jackson, Miss.,* 544 U.S. 228, 233 (2005) (plurality opinion) (''[W]hen Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes.'').

The Chamber of Commerce also asserted that the plain meaning of the term ''authorized'' employee representative requires a legal delegation (see Document ID 1952, p. 10). In support, the Chamber cites two cases—*Anderson* v. *U.S. Dep't of Labor,* 422 F.3d 1155, 1178–79 (10th Cir. 2005) and *United States* v. *Stauffer Chemical Co.,* 684 F.2d 1174, 1190–91 (6th Cir. 1982), *aff'd,* 464 U.S. 165 (1984) (Document ID 1952, p. 10). However, these cases are distinguishable and do not support the Chamber's proposition that a legal delegation of authority is required.

In *Anderson,* the Tenth Circuit addressed whether a whistleblower complainant's position as a political appointee precluded her from being an ''authorized representative of employees'' under the employee protection provisions of the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (CERCLA) and other related environmental statutes. 422 F.3d at 1157. The Department of Labor's Administrative Review Board (ARB) held that the complainant (Anderson) lacked standing to sue under CERCLA because the meaning of ''authorized representative'' under that statute requires ''some tangible act of selection by employees in order for one to be an 'authorized representative of employees.' '' Id. at 1180. The ARB concluded that Anderson could not as a matter of law ''represent'' employees in her position as a political appointee under state law and, even if she was permitted to serve as an ''authorized representative,'' she failed to establish that municipal employees or union officials ''authorized'' her to be their representative during her tenure.'' Id. at 1178, 1180. On appeal, the Tenth Circuit held that, based on the statutory language and the legislative history of the applicable statutes, the ARB construction of '' 'authorized representative' to require some sort of tangible act of selection is a permissible one.'' Id. at 1181.

The Chamber of Commerce argues that *Anderson* stands for the proposition that that an employee representative is ''authorized'' under the OSH Act only where there is some ''legal authority, rather than merely a request by employees to represent them.'' (Document ID 1952, p. 10) (citing *Anderson,* 422 F.3d at 1178–79). However, this is an incorrect reading of *Anderson.* The court in *Anderson* did not hold—as the Chamber suggests—that ''legal authority'' is required for an employee representative to be ''authorized'' under any statute. Further, the holding in *Anderson* was limited to the meaning of ''authorized representative of employees'' as used in CERCLA (and other related environmental statutes). OSHA has never required an employee representative to have ''legal authority'' as a precondition to serving as a walkaround representative in the more than fifty years of implementing section 8(e) of the OSH Act, nor has any court. For example, OSHA's FOM has long instructed that employee members of an established workplace safety committee or employees at large can designate a walkaround representative, see OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Section VII, A.1–A.2, even though that representative does not have ''legal authority.''

Likewise, *Stauffer Chemical* is inapplicable to this rule. In that case, the U.S. Court of Appeals for the Sixth Circuit held that the term ''authorized representative'' of the EPA Administrator under the Clean Air Act's provision governing pollution inspections means ''officers or employees of the EPA'' and cannot include employees of private contractors. *Stauffer Chem. Co.,* 684 F.2d at 1189–90. The Sixth Circuit, after reviewing the language of the Clean Air Act and its legislative history, determined that ''[c]onstruing authorized representatives under section 114(a)(2) to include private contractors would lead to inconsistencies between that section and other parts of the Clean Air Act.'' Id. at 1184. Contrary to the Chamber's contention, *Stauffer Chemical* does not hold that ''an 'authorized representative' of an employee cannot be a third party but must be a fellow employee of the EPA.'' (Document ID 1952, p. 10). That issue was not before the court. As discussed above, the court's holding in *Stauffer Chemical* was limited to who is permitted to serve as an ''authorized representative'' of the EPA Administrator under the Clean Air Act and whether that includes private contractors or only officers and employees of the EPA. It has no bearing on the meaning of ''authorized employee representative'' in the context of 8(e) of the OSH Act.

The National Federation of Independent Business argued ''[t]he proposed rule fails to incorporate properly the statutory requirement that any participation in an inspection by persons other than the OSHA inspector must be solely for the purpose of 'aiding such inspection,' and OSHA's position that virtually any activity by a walking-around individual aids an inspection is arbitrary and capricious'' (Document ID 0168, p. 6). OSHA rejects the premise that any activity by a third-party will aid the inspection under the final rule. The existing regulation contains a provision, which will remain in this final rule, requiring that the CSHO first determine that ''good cause has been shown why accompaniment by a third party . . . is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.'' 29 CFR 1903.8(c); see also 1903.8(a) (representatives of employer and employees shall be given an opportunity to accompany the CSHO during the physical inspection ''for the purpose of aiding such inspection'').

b. Consistency With Other OSHA Regulations

Some commenters asserted that this rule conflicts with other OSHA regulations (see, *e.g.,* Document ID 1938, p. 4; 1946, p. 4–5). One commenter argued that this regulation directly conflicts with the definition of ''authorized employee representative'' in OSHA's Recordkeeping and Reporting regulation at § 1904.35(b)(2)(i) (Document ID 1976, p. 6).

OSHA's Recordkeeping and Recording regulation provides that ''an employee, former employee, personal representative, and authorized employee representative'' may obtain copies of the OSHA 300 Logs and defines the term ''authorized employee representative'' as ''an authorized collective bargaining agent of employees.'' 29 CFR 1904.35(b)(2), (b)(2)(i). That regulation also provides for access to OSHA 301 Incident

Reports; however, ''employees, former employees, and their personal representatives'' may only access OSHA 301 Incident Reports ''describing an injury or illness to *that* employee or former employee.'' 29 CFR 1904.35(b)(2)(v)(A) (emphasis added). Only ''authorized employee representatives'' for an establishment where the agent represents employees under a collective bargaining agreement have access to OSHA 301 Incident Reports for the entire establishment (and only the section titled ''Tell us about the case''). See 29 CFR 1904.35(b)(2)(i), (b)(2)(v)(B).

''Authorized employee representative'' is defined narrowly in the Recordkeeping and Reporting regulation because of employee privacy interests and the role a union serves in safety and health matters when employees have an authorized collective bargaining agent. In the preamble to the 2001 Recordkeeping Rulemaking, OSHA explained the agency's decision to grant expanded access to the OSHA 301 Incident Reports by extensively discussing the importance of protecting employees' private injury and illness information while also recognizing the value of analyzing injury and illness data to improve injury and illness prevention programs. See 66 FR 6053–54, 6057. OSHA noted that the records access requirements were intended as a tool for employees and their representatives to affect safety and health conditions at the workplace, not as a mechanism for broad public disclosure of injury and illness information. See id. at 6057. OSHA also explained that granting access to unions serves as a useful check on the accuracy of the employer's recordkeeping and the effectiveness of the employer's safety and health program. See id. at 6055.

Therefore, in defining ''authorized employee representative'' as ''an authorized collective bargaining agent of employees,'' OSHA sought to strike a reasonable balance between employees' privacy interests and a union representative's more comprehensive role representing employees on safety and health matters in the workplace. See id. (describing the need to apply a ''balancing test'' weighing ''the individual's interest in confidentiality against the public interest in disclosure.''). Employee privacy concerns are not present in the context of this rule and, thus, a more inclusive definition to include any representative authorized by employees, regardless of whether the employees have a collective bargaining agent, is appropriate to effectuate the Act's goal of ensuring employee representation to aid the inspection.

Moreover, in exercising its authority to issue regulations implementing the walkaround rights granted to employees under section 8 of the Act, OSHA is not bound by the definition in the Recordkeeping and Reporting regulation. See, *e.g., Env't Def.* v. *Duke Energy Corp.,* 549 U.S. 561, 575–76 (2007) (EPA could interpret term ''modification'' differently in two different regulations dealing with distinct issues). Unlike 29 CFR 1903.8(c), the Recordkeeping and Reporting regulation, including 29 CFR 1904.35(b)(2)(i), was promulgated under a different provision of the Act (section 8(c)). Accordingly, OSHA is permitted to define the same term differently in the Recordkeeping and Walkaround regulations because they implicate different regulatory, compliance, and privacy interests.

Several commenters also contended that this rule conflicts with the Commission's existing regulation that defines ''authorized employee representative'' as ''a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees who are members of the collective bargaining unit,'' 29 CFR 2200.1(g) (*e.g.,* Document ID 1938, p. 4; 1946, p. 4–5; 1976, p. 7). Some of these commenters incorrectly stated that 29 CFR 2200.1(g) is an OSHA regulation (*e.g.,* Document ID 1976, p. 6). As an initial matter, the Commission is an independent agency and 29 CFR 2200.1(g) is a procedural rule promulgated by the Commission, not OSHA. Indeed, Congress delegated adjudicated authority to the Commission and delegated enforcement and rulemaking authority under the OSH Act to the Secretary. See *Martin* v. *Occupational Safety & Health Rev. Comm'n,* 499 U.S. 144, 151 (1991) (describing the ''split enforcement'' structure of the OSH Act). The Commission's procedural regulations at 29 CFR 2200.1(g) were promulgated under 29 U.S.C. 661(g), which authorizes the Commission to promulgate rules only as are necessary for the orderly transaction of its proceedings. Under the ''split enforcement'' structure of the OSH Act, the Commission's procedural rules apply only to its adjudicatory proceedings, and thus the Commission's interpretation of ''authorized employee representative'' has no bearing on the Secretary's authority to interpret and issue regulations on the meaning of ''authorized employee representative'' in Section 8(e) of the OSH Act. Notably, the term ''authorized employee representative'' is not used in the Commission rules in an exclusionary way, as commenters have argued. Under Commission rules, employee representatives may participate in Commission proceedings even if they are not associated with a collective bargaining unit. See 29 CFR 2200.1(h); 2200.20(a); 2200.22(c).

The Chamber of Commerce argued that the proposed rule contradicts the Commission's procedural rule at 29 CFR 2200.53 by allegedly allowing OSHA and '''experts' deemed qualified by OSHA inspectors alone'' access to a worksite before the beginning of a Commission proceeding to engage in discovery (Document ID 1952, p. 15–17). There is no such contradiction as the Commission's discovery rules have no applicability to OSHA's investigation. OSHA has clear authority to access a worksite in order to conduct inspections. See 29 U.S.C. 657(a)(1)–(a)(2), (b).

c. Basis for the Rule

Some commenters argued that OSHA ''proposed [the rule] without the reasoned explanation that is required'' (Document ID 1952, p. 13), ''failed to consider obvious and critical issues'' (Document ID 1954, p. 4), failed to provide technical data that supports its reasonings (Document ID 1776, p. 10), and failed to provide a rational basis why the regulation will advance the agency's mission (Document ID 1953, p. 3).

The APA requires an agency to ''examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' '' *Air Transp. Ass'n of Am., Inc.* v. *U.S. Dep't of Agric.,* 37 F.4th 667, 675 (D.C. Cir. 2022) (internal citations omitted). If an agency relies on technical studies, those studies ''must be revealed for public evaluation.'' *Chamber of Com. of U.S.* v. *SEC,* 443 F.3d 890, 899 (D.C. Cir. 2006) (quoting *Solite Corp.* v. *EPA,* 952 F.2d 473, 484 (D.C. Cir. 1991)).

OSHA complied with APA rulemaking requirements by discussing and outlining its policy considerations and determinations in making this clarification via this rule. OSHA did not rely on any technical studies, but examined the record and based its determination that this rule will aid OSHA's workplace inspections on evidence in the record and decades of enforcement experience. For example, commenters stated that this rule would particularly aid OSHA inspections involving vulnerable working populations in the farming industry and

meatpacking industry as well as specialized workplaces such as airports that involve several different employers and contractors (see, *e.g.,* Document ID 1023, p. 3–4; 1728, p. 8–9; 1763, p. 2–3; 1980, p. 3).

Some commenters also argued the rule represents a departure from OSHA's prior position and its policy reasons are insufficient to support the change (see, *e.g.,* Document ID 1952, p. 14; 1954, p. 4). The Chamber of Commerce, for example, contended that OSHA failed to acknowledge ''that it is changing position'' and failed to show ''good reasons for the new policy.'' (Document ID 1952, p. 14). As explained throughout this final rule, by clarifying OSHA's interpretation of the OSH Act that third parties can serve as employee representatives for the purposes of the OSHA walkaround inspection, the revised regulation more closely aligns with the text of Section 8(e) and serves several beneficial purposes. Several commenters provided examples of third-party representatives who accompanied OSHA on walkaround inspections (Document ID 1750, p. 3; 1761, p. 1; 1945, p. 3; 1958, p. 3; 1980, p. 2). For example, one commenter who served as the director of AFSCME's safety and health program discussed serving as a third-party employee walkaround representative accompanying CSHOs on inspections of health care facilities in the 1980s (Document ID 1945, p. 3). Furthermore, OSHA's letter of interpretation to Mr. Steve Sallman (Sallman letter) clarified OSHA's interpretation that a third party may serve as a representative authorized by employee (Document ID 0003).

d. Specificity of the Rule

Some commenters argued the rule is overly broad and will invite chaos (Document ID 1113; 1779, p. 2, 3, 5; 1942, p. 1–2, 3, 5; 1952, p. 13; 1953, p. 1, 5). Some argued that the rule will leave ''open-ended which individuals can be considered 'authorized representatives''' (Document ID 1952, p. 13; see also 1782, p. 3–5; 1953, p. 4–5). And they argued that, as a result, the rule is arbitrary and capricious because it will allow a ''multitude of third parties'' as representatives or a ''seemingly unlimited variety of people who can represent employees during a plant walkaround'' thereby leaving ''employers unable to prepare for which individuals may enter their facilities during inspections and what such individuals may do while on their property'' (Document ID 1782, p. 3–5; 1952, p. 13; 1953, p. 4–5). Finally, some commenters argued that the rule is arbitrary and capricious because it lacks sufficient specificity of third-party qualifications and provides CSHOs too much discretion (Document ID 1754, p. 2; 1776, p. 2–3).

OSHA disagrees with these concerns. First, the final rule provides greater clarity and specificity regarding who may serve as a third-party representative than the prior regulation. OSHA's prior regulation included only two, non-exhaustive examples with no guiding criteria for determining if good cause had been shown that a third party was reasonably necessary. As explained in the NPRM, third-party representatives are reasonably necessary if they will make a positive contribution to a thorough and effective inspection. And, as discussed in Section IV.A, The Need for and Benefits of Third-Party Representation, there are many types of knowledge, skills, and experience that can aid the inspection. Therefore, the final rule provides several factors for a CSHO to consider when determining if good cause has been shown that a third-party employee representative is reasonably necessary to the conduct of an effective and thorough physical inspection.

Further, third-party representatives are subject to other inspection-related regulations, which allows the CSHO to deny access if the representative unreasonably disrupts the employer's operations or interferes with the inspection. See 29 CFR 1903.7(d), 1903.8(d). While some commenters asserted that this rule leaves them unable to ''prepare'' for the individuals who may come to the workplace, inspections under the OSH Act are unannounced and employers are not entitled to advanced notice to ''prepare'' for inspections. See 29 U.S.C. 657(a) (authorizing Secretary of Labor to enter, inspect, and investigate workplaces without delay); 29 U.S.C. 666(f) (providing for criminal penalties for ''[a]ny person who gives advanced notice of any inspection''); see also *Marshall* v. *Shellcast Corp.,* 592 F.2d 1369, 1371 (5th Cir. 1979) (Congress considered the '' 'element of surprise' a crucial component'' of OSHA inspections).

As such, OSHA finds that this rule is consistent with APA and the OSH Act.

2. Public Hearing

Some commenters asserted that OSHA should have held public hearings (see, *e.g.,* Document ID 1774, p. 6–7; 1955, p. 10). As OSHA explained in the proposal, because this rulemaking involves a regulation rather than a standard, it is governed by the notice and comment requirements in the APA (5 U.S.C. 553) rather than section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR 1911.11. Therefore, the OSH Act's requirement to hold an informal public hearing (29 U.S.C. 655(b)(3)) on a proposed rule, when requested, does not apply to this rulemaking.

Section 553 of the APA does not require a public hearing. Instead, it states that the agency must ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation'' (5 U.S.C. 553(c)). In the NPRM, OSHA invited the public to submit written comments on all aspects of the proposal and received thousands of comments in response. OSHA extended its initial 60-day comment period by two weeks in response to requests from the public (88 FR 71329). No commenter identified any information that might have been submitted at a public hearing that was not, or could not have been, submitted during the written comment period. Accordingly, OSHA finds that interested parties had a full and fair opportunity to participate in the rulemaking and comment on the proposed rule through the submission of written comments.

G. Practical and Logistical Issues

Commenters raised various questions and concerns regarding how OSHA will implement and administer this rule. Many of these questions are beyond the scope of this rulemaking, while others are addressed by other regulations or enforcement guidance. While OSHA cannot anticipate every possible scenario, OSHA has provided responses below or otherwise herein. CSHOs will also continue to conduct inspections in accordance with OSHA's other regulations and the FOM. Further, OSHA intends to issue additional guidance for its CSHOs on administering this rule.

Commenters' questions and concerns can be grouped as follows: (1) how employees will authorize their walkaround representative(s); (2) how many employee walkaround representatives are permitted to accompany the CSHO; (3) whether advance notice of inspections will be provided; (4) how delays may impact inspections; and (5) how OSHA intends to respond to third-party interference or disruptions during the walkaround.

First, many commenters had questions about the process by which employees would authorize a walkaround representative (see, *e.g.,* Document ID 1726, p. 3–4; 1748, p. 6; 1751, p. 4; 1759, p. 2; 1762, p. 2–3; 1763, p. 5–6, 8; 1775, p. 4–6; 1779, p. 2; 1782, p. 2–3, 6; 1936, p. 3; 1955, p.

4–6, 8–9; 1976, p. 12–14). For example, one commenter stated, ''[a]s proposed, there are no established procedures for an employer's employees to make a designation of an authorized representative that is not an employee of the employer'' (Document ID 1779, p. 2). Several commenters asked how many employees are required to designate a representative (see, *e.g.,* Document ID 1748, p. 6; 1751, p. 1; 1779, p. 5; 1936, p. 3; 1942, p. 4–5; 1946, p. 3, 7; 1953, p. 5; 1966, p. 5; 1976, p. 12–13), what the designation process entails (see Document ID 1030; 1759, p. 2; 1946, p. 3, 7; 1966, p. 5; 1976, p. 12–14; 9901; 11524; 11275), and whether the designation process would include a vote (see, *e.g.,* Document ID 1976, p. 10, 13). Further, the Construction Industry Safety Coalition asserted that the rule also ''fails to address how a CSHO is to identify if the employees have designated a third-party representative, or when'' (Document ID 1955, p. 5). Commenters also asked whether OSHA would require evidence when determining that a representative is authorized (see, *e.g.,* Document ID 1726, p. 3–4).

Other commenters also asked what OSHA would do if faced with requests for third-party employee representatives from competing unions (Document ID 1952, p. 3; 11275) as well as non-unionized worksites or worksites with unionized and non-unionized employees (Document ID 1782, p. 4; 1933, p. 3; 1960, p. 4–5; 1976, p. 8, 12–13; 11275). Some commenters asserted that the ''rule does not provide clear guidance on how multiple Walkaround Representatives should be selected, especially when chosen by different employees or groups within the organization'' (Document ID 1954, p. 3) and on multi-employer worksites (Document ID 1960, p. 2–3; 1774, p. 5).

Neither the OSH Act nor any OSHA regulations specify when or how employees should authorize their walkaround representative(s). As such, there is no single or required process by which employees can designate a walkaround representative. OSHA has never had a rigid designation process or required documentation to show that a representative is authorized. As explained above, OSHA has long permitted nonemployees to serve as employee walkaround representatives, and OSHA has not encountered issues with the ways employees may authorize their representative. Thus, because OSHA does not believe such measures are necessary and seeks to provide flexibility for employees' designation process, OSHA declines to adopt specific procedures.

Likewise, there is no single way for employees to inform OSHA that they have a walkaround representative (whether that representative is an employee or a third party). For example, OSHA's FOM provides that in workplaces where employees are represented by a certified or recognized bargaining agent, the highest-ranking union official or union employee representative on-site would designate who participates in the walkaround. See OSHA Field Operations Manual, CPL 002–00–164, Chapter 3, Section VII.A.1. Employees could also designate an authorized employee representative when they authorize them to file an OSHA complaint on their behalf. Additionally, employees may inform the CSHO during the walkaround inspection itself or during employee interviews, or they may contact the OSHA Area Office. This is not an exhaustive list but rather some examples of ways employees may designate their walkaround representative(s).

As explained previously, the OSH Act contains no requirement for majority support, nor has OSHA ever imposed one in determining who is the employees' walkaround representative. Cf. OSHA Field Operations Manual, CPL 002–00–164, Chapter 3, Section VII.A.2 (noting that members of an established safety committee can designate the employee walkaround representative). The OSH Act does not require that a specific number or percentage of employees authorize an employee representative, and OSHA declines to do so through this rulemaking. However, in a workplace with more than one employee, more than one employee would be needed to authorize the walkaround representative pursuant to the language in section 8(e) of the OSH Act, which uses the phrase ''representative authorized by [the employer's] employees.'' 29 U.S.C. 657(e). If the CSHO is unable to determine with reasonable certainty who is the authorized employee representative, the CSHO will consult with a reasonable number of employees concerning matters of safety and health in the workplace. See 29 CFR 1903.8(b).

Second, several commenters asserted that the number of third-party representatives that employees may authorize for a single inspection is unclear or stated their opposition to having multiple representatives during an inspection (Document ID 1937, p. 4; 1946, p. 3, 7; 1953, p. 5; 1966, p. 5; 1976, p. 12–13; 9901). For example, the Air Conditioning Contractors of America claimed that the rule ''lacks clear parameters regarding the number of third-party representatives allowed during a single inspection and fails to provide guidance on the management and prioritization of multiple requests from employees for different representatives. This has the potential to result in impractical and chaotic inspection processes with a multitude of third-party participants'' (Document ID 1935, p. 1; see also 1030; 11313). Similarly, the International Foodservice Distributors Association asserted the rule ''lacks guidance or proposed language on how third-party representatives may be selected by the employees and any limiting principles on the number of representatives who may be selected. This will lead to confusion for both employees and employers'' (Document ID 1966, p. 5).

Other commenters noted that the number of permitted representatives is complicated by unique worksites. For instance, the National Association of Home Builders (NAHB) questioned how ''OSHA [will] identify who the 'employee representative' is of a general contractor who may only have one employee on the particular jobsite, while multiple trade subcontractors and their employees are also present?'' (Document ID 1774, p. 5; see also 1960, p. 2–3). Within the packaging and manufacturing industry, the Flexible Packaging Association proposes that because the rule presents several issues and threats ''for a large party of employees and their representatives, the CSHO, the employer, and his/her representatives on the manufacturing floor,'' ''each employee should be limited to no more than one representative, and the employer should be limited to one representative'' with an exception for translators (Document ID 1782, p. 2–3).

Under OSHA's existing regulations, a representative of the employer and a representative authorized by its employees can accompany the CSHO on the inspection, but the CSHO may permit additional employer representatives and additional authorized employee representatives if the additional representatives will further aid the inspection. See 29 CFR 1903.8(a). A different employer and employee representative may accompany the CSHO during each different phase of an inspection if this will not interfere with the conduct of the inspection. Id. OSHA's FOM further explains that where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. OSHA Field Operations

Manual, CPL 002–00–164, Chapter 3, Section VII.A. However, if the CSHO determines that multiple representatives would not aid the inspection or if the presence of multiple representatives interferes with the inspection, the CSHO retains the right to deny the right of accompaniment to representatives. See 29 CFR 1903.8(a), (d).

Third, some commenters questioned whether, due to this rule, OSHA would begin providing advance notice of an inspection to employers, employee representatives, or both. For example, some commenters, like the American Trucking Association, stated that the proposed rule did not indicate whether OSHA would provide an employer with advance notice, prior to arriving at a worksite, that a third-party employee representative would be accompanying OSHA during the walkaround portion of its inspection (Document ID 1773, p. 3). The Flexible Packing Association recommended that OSHA give employers advance notice that a third-party representative will be accompanying the CSHO, ''justify why the third-party would assist in an effective walkaround,'' and then give an employer ''10 days to respond to OSHA on such request'' (Document ID 1782, p. 5).

Several commenters also addressed advance notice to employee representatives. For example, the AFT urged that in inspections where OSHA gives advance notice to the employer that ''the complainant, union or other employee representative must be notified at the same time'' (Document ID 1957, p. 6). In addition, the Service Employees International Union (SEIU) suggested that OSHA can give advance notice to third parties prior to the inspection of airports for the purpose of seeking assistance with industry-specific issues such as jurisdiction and security clearance, although it is unclear if that third party's assistance would be limited to pre-inspection activity or if the SEIU also envisioned the third party being an employee walkaround representative (Document ID 1728, p. 8–9). The Office of Advocacy of the U.S. Small Business Administration asserted that ''it appears to naturally flow from the proposed regulation that these non-employee third-party representatives will, for purposes of planning, be given advance notice of the inspection so they can arrange to meet the inspector at the workplace, when notice of the inspection is supposed to be strictly confidential'' (Document ID 1941, p. 5 fn. 23; see also 1955, p. 5).

The OSH Act generally forbids advance notice of OSHA inspections; indeed, any person who gives advance notice without authority from the Secretary or the Secretary's designees is subject to criminal penalties. See 29 U.S.C. 666(f). However, OSHA regulations provide certain exceptions to this general prohibition. See 29 CFR 1903.6(a); OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Section II.D (discussing advance notice of OSHA inspections). These exceptions include: (1) ''cases of apparent imminent danger'' (29 CFR 1903.6(a)(1)); (2) ''circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection (29 CFR 1903.6(a)(2)); (3) ''[w]here necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection'' (29 CFR 1903.6(a)(3)); and (4) ''other circumstances where the Area Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection'' (29 CFR 1903.6(a)(4)).

Given the OSH Act's general prohibition against advance notice and limited exceptions, OSHA declines to further amend the rule to guarantee advance notice of inspections to either employers or third-party employee representatives. Whether or not an exception applies depends on the particular needs and circumstances of the inspection.

Fourth, and related to advance notice, some commenters also asserted that the proposed rule could result in delays to OSHA's inspection (see, *e.g.,* Document ID 1964, p. 5–6; 1966, p. 3; 1972, p. 8; 1976, p. 15). Reasons given for potential delays include: CSHO difficulty in determining who the authorized representative is among various vying third-party representatives (Document ID 1964, p. 5–6), fewer employers consenting to OSHA inspections if the CSHO is accompanied by a third-party employee representative (Document ID 0040, p. 4–5; 1933, p. 2–3; 1966, p. 3), employers failing to notify authorized employee representatives after being given advance notice of an inspection by OSHA (Document ID 1761, p. 3), representatives conferring with workers on personal issues (Document ID 1782, p. 3–4), workers needing to advocate to OSHA that their representative is reasonably necessary (Document ID 1972, p. 8), employers subjecting third-party representatives to background checks or other requirements for entry to employer property (Document ID 1960, p. 5), expansion of the inspection resulting from third-party representative involvement (Document ID 0040, p. 3), employers asserting that their property contains proprietary information when faced with a third-party representative (Document ID 0040, p. 4), and CSHOs struggling to exercise their discretion because of a lack of guidelines in the proposed rule (Document ID 1976, p. 14–15).

The issues that have been raised are issues that CSHOs have long addressed in conducting inspections, and CSHOs are experienced and adept at conducting inspections without delay and in a reasonable manner. See 29 U.S.C. 657(a). OSHA will use its authority under 29 CFR 1903.8(b) to resolve potential disputes about third-party representatives expeditiously. As explained previously, OSHA anticipates that the vast majority of employers will not deny entry simply because the employees' walkaround representative is a third party. However, OSHA will obtain a warrant when necessary to conduct its inspections. See *Barlow's,* 436 U.S. at 313; see also 29 U.S.C. 657(a)(1)–(2); 29 CFR 1903.4(a). And, if the Secretary is on notice that a warrantless inspection will not be allowed, OSHA may seek an anticipatory warrant to conduct its inspection without delay. See 29 CFR 1903.4(b)(1). Accordingly, OSHA does not believe that this rule will result in further inspection delays that would be detrimental to worker safety and health.

Last, many commenters had questions about how OSHA would handle situations where a third party deviated from their role as the employees' walkaround representative and engaged in conduct unrelated to the inspection—particularly conduct that interfered with OSHA's inspection and/or disrupted the employer's operations (see, *e.g.,* Document ID 1762, p. 5). As discussed in Sections IV.A, IV.C, and IV.H, commenters raised a number of potential scenarios where third parties may have ulterior motives. Commenters also raised scenarios where third-party representatives may not have ulterior motives but nevertheless interfere with an inspection by engaging in conduct such as ''[having] lengthy discussions of process equipment and safety designs, or products.'' (Document ID 1782, p. 3–4).

Many commenters questioned CSHOs' ability to stay in charge of such inspections (see, *e.g.,* Document ID 1030; 1935, p. 1; 1938, p. 5), while others offered various suggestions. For example, one commenter stated that ''once third parties are identified, they should be governed by the same inspection standards as the CSHO'' (Document ID 1762, p. 5). In addition, the NRF requested that OSHA ''define what constitutes appropriate conduct

for an Authorized Representative and give the employer the express authority to remove an Authorized Representative from the premises'' (Document ID 1776, p. 4). The NRF also requested that OSHA ''mandate a dress code for third parties'' for the protection of employer products and equipment and to prevent clothing with ''inappropriate messaging, language, campaign information.'' (Document ID 1776, p. 4).

Commenters' concerns about the CSHOs' ability to address potential interference or disruptions to the workplace are unfounded. CSHOs have extensive experience conducting inspections and handling any interference or disruptions that may arise. During inspections, CSHOs will set ground rules for the inspection to ensure all representatives know what to expect. While OSHA declines to anticipate and categorize every type of conduct as appropriate or inappropriate or mandate specific rules, such as dress codes, OSHA intends to issue further guidance to the extent specific issues arise.

In addition, and as explained in Chapter 3 of the FOM, the employee representative shall be advised that, during the inspection, matters unrelated to the inspection shall not be discussed with employees. OSHA Field Operations Manual, CPL 02–00–164, Chapter 3, Section V.E. CSHOs will also ensure the conduct of inspections will not unreasonably disrupt the operations of the employer's establishment. See 29 CFR 1903.7(d). If disruption or interference occurs, CSHOs will promptly attempt to resolve the situation. Depending on the severity and nature of the behavior, a warning may suffice in some instances. In other instances, the CSHO may need to terminate the third party's accompaniment during the walkaround. As the FOM explains, the CSHO will contact the Area Director or designee and discuss whether to suspend the walkaround inspection or take other action. See OSHA Field Operations Manual, Chapter 3, Section V.E.

H. Liability Issues

Several commenters raised questions concerning liability. Specifically, they questioned who would be liable if a representative authorized by employees is injured, causes injury to others, or engages in misconduct (see *e.g.* Document ID 0527, p. 2; 1030; 1762, p. 2–3; 10253; 11228; 11482), or discloses trade secrets (Document ID 1953, p. 7). For example, the International Foodservice Distributors Association asserted that third-party representatives who are not affiliated with the workplace and/or lack an appropriate level of industry experience or adequate safety training could be easily injured or cause injury during an inspection (Document ID 1966, p. 2). The Workplace Policy Institute also raised concerns about the conduct of third-party representatives, who are ''likely'' not state actors and not limited by due process requirements (Document ID 1762, p. 4). Some commenters asked if OSHA would bear any liability in these circumstances (see, *e.g.,* Document ID 1976, p. 15; 1835), while other commenters asserted that the proposed rule would increase employers' liability (see, *e.g.,* Document ID 1933, p. 3). In addition, NRF requested that the rule be further amended to indemnify an employer against any ''violent or damaging conduct committed by'' the third-party representative while on site or provide for ''felony prosecution of any CSHO that abuses their authority under the proposed rule'' (Document ID 1776, p. 4, 7). Black Gold Farms argued that OSHA should train representatives on general and industry-specific topics, show the employer proof of this training, and then assume liability for the representative's actions if they violate the employer's policy or the law (Document ID 0046).

For several reasons, OSHA has determined it is unnecessary to amend the rule to assign liability or indemnify employers. As an initial matter, the OSH Act does not seek to ''enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees.'' 29 U.S.C. 653(b)(4). Varying bodies of law, including tort and criminal law, already regulate the scenarios that commenters have raised, and any regulation from OSHA on liability or indemnification would potentially upend those other laws. In fact, commenters identified worker's compensation, tort law, 42 U.S.C. 1983, and 18 U.S.C. 202(a) as potentially relevant (Document ID 1762, p. 3; 1954, p. 4; 1955, p. 2–3; 1976, p. 21 fn. 79).

OSHA generally is not liable for the conduct of authorized employee representatives, who are not themselves officers or employees of a Federal agency. And, to the extent that any claim relates to OSHA's conduct during an inspection, under the Federal Tort Claims Act (FTCA), the United States is not liable for ''[a]ny claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.'' 28 U.S.C. 2680(a). A number of U.S. Circuit Court of Appeals have held that general administrative inspections conducted by OSHA compliance officers fall under this ''discretionary function'' exception to the FTCA. See, *e.g., Irving* v. *U.S.,* 162 F.3d 154, 164 (1st Cir. 1998). OSHA declines to opine on the merits of other legal bases for liability because determining liability is a fact-specific inquiry and it is beyond the scope of this rulemaking.

Commenters raised several hypothetical scenarios of injury or misconduct but failed to identify any specific or substantiated examples of when such scenarios have occurred during OSHA inspections. OSHA therefore anticipates that these scenarios involving injury or misconduct will be rare, and declines to adopt any training requirement for third parties.

Moreover, this regulation and OSHA's other inspection-related regulations contain safeguards to reduce the likelihood of any misconduct. This final rule places limitations on who can serve as the employee walkaround representative. Per the rule, the CSHO must determine whether a potential third-party employee walkaround representative will aid the inspection. The CSHO will determine whether good cause has been shown why the individual is reasonably necessary to an effective and thorough OSHA inspection. The CSHO has authority to deny the right of accompaniment to any individual who is not reasonably necessary to the inspection. Moreover, the CSHO has authority to deny accompaniment to an employee walkaround representative who is disrupting the inspection. Further, OSHA's regulation at 29 CFR 1903.9(d) provides employers the option to request that, in areas containing trade secrets, the employee walkaround representative be an employee in that area or an employee authorized by the employer to enter that area, and not a third party. OSHA has determined that the existing regulatory framework provides sufficient protection for the hypotheticals that commenters raised. In addition, at least one commenter, the Utility Line Clearance Safety Partnership, noted that some employers have existing policies and waivers for third parties that enter their sites, though OSHA declines to opine on the legal sufficiency of such documents (Document ID 1726, p. 5).

Finally, potential abuse of the walkaround provision does not

necessitate excluding walkaround rights for third parties altogether. In cases involving the Mine Act, which the Secretary of Labor also enforces, courts have rejected hypothetical arguments that third-party walkaround representatives may cause harm or abuse their position during an MSHA inspection. See *Thunder Basin Coal Co.,* 56 F.3d at 1281 (noting the potential for abuse ''appears limited'' as designation as the miners' representative does not ''convey 'an uncontrolled access right to the mine property to engage in any activity that the miners' representative wants'') (*quoting Thunder Basin Coal Co.* v. *Reich,* 510 U.S. 200, 217 (1994)); *Kerr-McGee Coal Corp.,* 40 F.3d at 1264 (''The motivations of a miners' representative are irrelevant so long as the representative, through its actions, does not abuse its designation and serves the objectives of the Act.''); *Utah Power & Light Co.,* 897 F.2d at 452 (recognizing mine's concern that walkaround rights may be abused by nonemployee representatives but holding that potential abuse ''does not require a construction of the Act that would exclude nonemployee representatives from exercising walkaround rights altogether''). OSHA agrees. Because an authorized employee representative does not have uncontrolled access to the employer's property and the CSHO is in control of the inspection, the risk of misconduct, damage, or injury appears limited.

I. Other Issues

Renner Bros. Construction, Inc. asked if they would need to fire or reassign their current safety representatives because of this rule (Document ID 1091). Third-party employee representatives are not employees or representatives of the employer being inspected, nor do they have a duty to the employer, and thus they should not be a consideration when employers make staffing decisions related to their safety representatives.

Additionally, the State Policy Network and other commenters that submitted a report from the Boundary Line Foundation asserted that OSHA presented a prior version of the Field Operations Manual, CPL 02–00–159 (10/1/2015) (Document ID 0004) ''as a document integral to the development of and justification for the'' rule (Document ID 1965, p. 22–28; see also 1967; 1968; 1973; 1975). It next claimed that OSHA's submission of another prior Field Operations Manual, CPL 02–00–160 (Document ID 0005) into the docket misrepresented this FOM as the current FOM (see, *e.g.,* Document ID 1965, p. 26–28). Next, it asserted that the FOM has no ''color of authority'' for rulemaking purposes (Document ID 1965, p. 28–29; see also 1967; 1968; 1973; 1975). It finally argued that OSHA erred in failing to submit into the docket the two most recent FOMs (CPL 02–00–163 and CPL 02–00–164) (Document ID 1965, p. 27–28; see also 1967; 1968; 1973; 1975).

These comments are unsupported. As explained in Section II.B, Regulatory History and Interpretive Guidance, OSHA submitted into the docket two versions of the FOM (CPL 02–00–159 (10/1/2015), Document ID 0004 and CPL 02–00–160 (8/2/2016), Document ID 0005) to explain OSHA's practice and interpretation of 29 CFR 1903.8(c). OSHA neither stated nor indicated the 2016 FOM was submitted as the most recent and effective FOM. The two most recent versions of the FOM are posted on OSHA's website, available for any interested party to review if it so wished. See *https://www.osha.gov/enforcement/directives/cpl-02-00-164* and *https://www.osha.gov/enforcement/directives/cpl-02-00-163.* Furthermore, the FOM is merely guidance and does not create any duties, rights, or benefits. There is no merit to the Boundary Line Foundation's argument that the fact that the record does not contain OSHA's two most recent FOMs rendered the public ''incapable of meaningful participation during the public comment period of this rulemaking process'' (Document ID 1965, p. 27).

V. Final Economic Analysis and Regulatory Flexibility Act Certification

A. Introduction

As described above, OSHA is revising 29 CFR 1903.8(c) to clarify that the representative(s) authorized by employees may be either an employee of the employer or, when reasonably necessary to aid in the inspection, a third party. Additionally, OSHA's revisions further clarify that third parties may be reasonably necessary to an OSHA inspection due to skills, knowledge, or experience that they possess. OSHA has determined that, while these revisions may impose societal costs and that some employers may decide to undertake actions not directly required to comply with any requirements in this rule, the revisions impose no new direct cost burden on employers.[2]

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of the intended regulation and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Orders 12866 and 13563 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means.

Under section 6(a) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Sept. 30, 1993), the Office of Management and Budget's (''OMB'') Office of Information and Regulatory Affairs (''OIRA'') determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. Section 3(f) of Executive Order 12866, as amended by section 1(b) of Executive Order 14094, Modernizing Regulatory Review, 88 FR 21879 (Apr. 6, 2023), defines a ''significant regulatory action'' as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. OIRA has determined that

[2] Executive Order 12866 requires agencies to consider costs that the regulated community may undertake regardless of whether those actions are directly required by a standard or regulation. OSHA's requirements under the OSH Act and related court decisions require the agency to show that an occupational safety and health standard is economically feasible. While this analysis is not being undertaken to show the feasibility of this rule, because it is not a standard, OSHA's approach to this finding does not generally consider activities voluntarily undertaken to be costs of a rule for the purposes of showing feasibility or, in the context of the Regulatory Flexibility Analysis, a significant economic impact. The agency has clarified in this analysis that some unquantified costs as considered by Executive Order 12866 may be incurred and that these differ from direct costs of a rule typically considered in an OSHA economic feasibility analysis.

this final rule is a significant regulatory action under section 3(f) but not under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Therefore, a full regulatory impact analysis has not been prepared.

This Final Economic Analysis (FEA) addresses the costs and benefits of the rule and responds to comments on those topics. The agency also evaluates the impact of the rule on small entities, as required by the Regulatory Flexibility Act (5 U.S.C. 605).

B. Costs

This final rule imposes no new direct cost burden on employers and does not require them to take any action to comply. This rule merely clarifies who can be an authorized employee representative during OSHA's walkaround inspection. As explained in the Summary and Explanation above, this rule does not require or prohibit any employer conduct, and an employer cannot ''violate'' this regulation. Any costs of a rule are incremental costs—meaning, the cost of a change from the future (projected from the current situation) without the final rule to a world where the final rule exists.

In the NPRM's Preliminary Economic Analysis, OSHA preliminarily determined that the proposal did not impose direct costs on employers and welcomed comments on this determination and information on costs that OSHA should consider. Many commenters stated their belief that the final rule will impose additional costs. Some commenters, even those who expressed concerns about potential costs of the rule, acknowledged that OSHA's prior rule allowed third parties to accompany OSHA inspectors if good cause had been shown that they were reasonably necessary to the inspection (see, *e.g.,* Document ID 0168, p. 2; 1941, p. 3; 1952, p. 2). Many commenters that stated the final rule will impose additional costs did not articulate exactly what changes this rule would introduce that would result in cost increase, and no commenter provided concrete evidence of actual costs it would incur because of the rule.

1. Rule Familiarization

OSHA considers the cost of rule familiarization in many cases as part of the economic impact analysis. However, it is not necessary for employers to read or become familiar with this rule as there are no requirements that the employer must undertake to be in compliance with the rule. If an employer does not become familiar with this rule, there is no risk of being out of compliance or violating the rule. Furthermore, this rule is a clarification of OSHA's longstanding practice with which employers are already familiar. Finally, the regulatory text is very brief. Even if employers did choose to read the revised regulation, it would take no more than a few minutes to do so.

Here, relying on the U.S. Census's Statistics of U.S. Businesses for 2017, it is estimated that the final rule will apply to inspections at approximately 7.9 million establishments. If familiarization takes, at most, five minutes per establishment and is performed by Safety Specialists (SOC 19–5011 [3]) or comparable employees, the total rule familiarization costs, assuming the unlikely event that all employers covered by OSHA will read this rule, will be approximately $40.5 million (= 7.9 million × [5/60] hour × $37.77 × [100% + 46% + 17%]), or about $5 per employer. This quantitative estimate portrays an unlikely upper bound assuming all employers will decide to read this regulation.

2. Training

Commenters suggested that employers would be required to provide safety training for third-party representatives and would accordingly incur costs for such training (see, *e.g.,* Document ID 1762, p. 2–3; 1782, p. 2–3, 5–6; 1974, p. 4; 1952, p. 4; 1774, fn. 17; 1976, p. 15). For example, NAHB suggested that OSHA's regulations require employers to train employees before they may use certain equipment, including personal protective equipment (PPE) (Document ID 1774, fn. 17), and the Phylmar Regulatory Roundtable stated that OSHA failed to consider the employer's need to provide third-party representatives with appropriate safety training ''for their personal safety, the safety of the workplace, and mitigation of liability'' (Document ID 1974, p. 4).

OSHA disagrees that employers will incur training costs as a result of this final rule. Training of third-party representatives is not required by the rule. OSHA's rules on training require an employer to train their employees. Because a third-party employee representative is not an employee of the employer undergoing an OSHA inspection, the employer has no obligation to train those individuals. Additionally, as stated in the NPRM, employers may have policies and rules for third parties to ''participate in a safety briefing before entering'' a jobsite. Given that such briefings would be given to the CSHO, OSHA finds there would be no further cost to an employer to have an additional visitor present during any potential safety briefing since any potential briefing would be given regardless of the number of individuals present. See 88 FR 59831. Commenters did not provide information that suggested otherwise. Based on this, and because such policies are not required by this rule, OSHA reaffirms that there are no costs attributable to this final rule for this activity.

Similarly, some commenters, including the Employers Walkaround Representative Rulemaking Coalition and the Chamber of Commerce, also said they would need to train employees to educate them on this final rule, or communicate with employees regarding the role of any non-employee third-party representative (see, *e.g.,* Document ID 1782, p. 5–6; 1976, p. 23–24; 1952, p. 5). As explained above, this rule includes no requirement that employers provide training and, therefore, any associated costs are not attributable to this final rule. Since this rule creates no new obligations for employers, training should be unnecessary. Accordingly, OSHA does not attribute costs for training to this rule.

3. Providing PPE

Several commenters were concerned that they would incur costs to provide PPE to third-party representatives (see, *e.g.,* Document ID 1774, p. 5; 1782, p. 3; 1937, p. 3; 1938, fn. 2; 1940, p. 3–4; 1941, p. 4–5; 1952, p. 5; 1976, p. 23). For example, NAHB said that general contractors do not have ''extra PPE to address every potential situation requiring PPE on a jobsite,'' and ''small businesses will rarely have enough extra PPE or extra equipment that would enable all relevant parties to take part in an inspection on a moment's notice'' (Document ID 1774, p. 5). This commenter also raises the issue of proper PPE fit for third-party representatives in light of OSHA's current rulemaking addressing correctly fitting PPE in construction (Document ID 1774, p. 5). That rulemaking addresses how the PPE that employers provide to their employees must fit properly but it does not introduce any obligation regarding the fit of PPE loaned or provided to non-employees who may be present on the worksite. Additionally, UFCW commented that

[3] The median hourly base wage is $37.77 (per Occupational Employment and Wages, May 2022, *https://www.bls.gov/oes/current/oes195011.htm#nathttps://www.bls.gov/oes/current/oes195011.htm#nat*). A fringe benefits ratio (46 percent of earnings) is derived from Bureau of Labor Statistics Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D. Also, overhead costs are assumed to be 17 percent of the base wage.

the cost of providing PPE to third-party representatives ''is minimal when considering the price of PPE and the number of OSHA inspections taking place in one specific facility'' (Document ID 1023, p. 8).

In the NPRM, OSHA considered that employers may have policies and rules for third parties, such as requiring visitors to wear PPE on site, but preliminarily concluded that this would not impose costs to employers because ''PPE could be supplied from extra PPE that might be available on site for visitors or could be supplied by the third party.'' 88 FR 59831. This final rule does not require employers to have policies that require visitors to wear PPE on jobsites and, therefore, any associated costs are not attributable to this final rule. However, where employers have such policies, it is likely that they would have extra PPE available for visitors in accordance with their own policies. OSHA's enforcement experience indicates that where employers have such policies, it is generally the case that those employers make PPE available to visitors. Nonetheless, while employers may provide any extra PPE they have to the third-party, the employer is under no obligation to provide PPE to third-party representatives during the walkaround inspection, nor would the employer be responsible to ensure proper PPE fit for third parties. If the employer does not have PPE available for the third-party representative, the third party would need to supply their own PPE. If the third-party representative does not have PPE that would allow them to safely accompany the CSHO, the representative would be unable to accompany the CSHO in any area where PPE is required. Accordingly, OSHA has determined that employers will incur no costs associated with the provision of PPE to third-party representatives as a result of this rule.

4. Policy Development, Revisions, and Planning

Some commenters, including the Office of Advocacy of the U.S. Small Business Administration and the Employers Walkaround Representative Rulemaking Coalition, said that this rule would impose costs related to preparing or updating policies and procedures around third-party visitors (see, *e.g.,* Document ID 1782, p. 5–6; 1941, p. 4–5; 1974, p. 4; 1976, p. 23). As stated above, this final rule merely clarifies longstanding OSHA practice to permit third-party representatives to accompany CSHOs on inspections. Since this rule creates no new obligations for employers, it should be unnecessary for employers to revise any policies or procedures that are currently in place.

5. Legal Advice and Consultations

Some commenters said that they would need to obtain additional legal advice or consult with legal counsel, or otherwise would incur legal costs related to this rule (see, *e.g.,* Document ID 1776, p. 7; 1782, p. 5–6; 1952, p. 5). For example, NAHB said that ''employers may accumulate additional and unanticipated costs for consulting with counsel on how they and their respective employees should handle these interactions [with third-party representatives]'' (Document ID 1774, p. 4), and the Employers Walkaround Rulemaking Coalition stated that employers would incur ''legal fees for managing more complex and fraught inspection interactions'' (Document ID 1976, p. 23). This commenter offered no evidence to support its assertion that interactions during inspections would be more difficult as a result of this rule.

As stated above, this final rule simply clarifies who can be an authorized employee representative during OSHA's walkaround inspection. The rule creates no new obligations for employers, and OSHA disagrees with the assertion that the rule creates a need for employers to consult with legal counsel. Furthermore, as discussed in other sections, the rule creates no obligation for employers to consult with legal counsel and therefore, OSHA attributes no costs to this voluntary activity.

6. Insurance and Liability Costs

Some commenters, including the Flexible Packaging Association, the Alliance for Chemical Distribution, and the Workplace Policy Institute said that this rule would raise their insurance premiums, necessitate purchasing additional liability or workers' compensation insurance to cover injuries to non-employees, or otherwise create liability risks for employers (see, *e.g.,* Document ID 1726, p. 8; 1762, p. 2–3; 1774, p. 3; 1974, p. 4–5; 1976, p. 21; 1781, p. 3; 1782, p. 5–6; 1952, p. 5). The Workplace Policy Institute stated that OSHA's liability insurance, rather than the employer's insurance, should cover injuries to third-party representatives to avoid imposing significant additional burden on employers (Document ID 1762, p. 3).

OSHA has determined that, as a result of this final rule, employers will not incur costs associated with insurance and liability for several reasons. First, because employers already have third parties who may come onto their worksites for a variety of reasons unrelated to an OSHA inspection, employers' insurance policies should already account for risks related to the presence of third parties. Second, given that there is an extremely low likelihood that an average employer would be inspected by OSHA,[4] that a third-party representative would be present during that inspection, and that that third party would be injured on the employer's premises, insurers would not see that as something necessitating additional insurance coverage or higher premiums. Finally, as OSHA explained in the Summary and Explanation, the CSHO has the authority to deny accompaniment to an employee walkaround representative who is disrupting the inspection, and would exclude a representative from the walkaround if they are acting in a manner that creates a dangerous situation for themselves or others (see Section III, Summary and Explanation). No commenter provided any data or information other than speculation that premiums would increase. Accordingly, OSHA has determined that employers will incur no new costs associated with insurance and liability as a result of this final rule.

7. Protecting Trade Secrets and Confidential Business Information

Some commenters, including the Chamber of Commerce, expressed concern that they would incur costs associated with protecting trade secrets or confidential business information during an inspection where a third-party representative was present, or from the harm resulting from their disclosure (see, *e.g.,* Document ID 1952, p. 5). Similarly, some commenters, such as the Flexible Packaging Association and the Office of Advocacy of the U.S. Small Business Administration, said that they would incur costs associated with preparing and executing nondisclosure agreements (see, *e.g.,* Document ID 1976, p. 23; 1782, p. 5–6; 1941, p. 4–5).

OSHA has determined that, as a result of this rule, employers will not incur costs associated with the protection of trade secrets or the preparation of nondisclosure agreements. As explained in the NPRM, under 29 CFR 1903.9(d), employers maintain the right to request that areas of their facilities be off-limits to representatives who do not work in that particular part of the facility. See 88

[4] In Fiscal Year 2023, OSHA conducted about 34,000 inspections of the more than 8 million employers covered by the OSH Act, which means the average employer has about a 0.43 percent chance of being inspected in a given year. Commonly Used Statistics, *available at https://www.osha.gov/data/commonstats.*

FR 59826, 59830–31. This final rule does not alter or limit employers' rights under section 1903.9(d) and, therefore, employers should not incur costs related to the protection of trade secrets or confidential business information. To the extent employers choose to take additional action to protect trade secrets, including the use of nondisclosure agreements, the ensuing costs would be the result of voluntary actions taken by the employer.

8. Hiring Experts

Some commenters were concerned about incurring additional costs associated with hiring experts (see, *e.g.,* Document ID 1941, p. 4–5; 1782, p. 5–6). For example, the Office of Advocacy of the U.S. Small Business Administration stated that employers may incur costs from ''providing additional staff and experts (including possible outside experts) to correspond to the variety of non-employee third-party participants during inspections and related activities'' (Document ID 1941, p. 5). As explained above, this final rule clarifies longstanding OSHA practice. The final rule creates no new obligations for employers, so it should be unnecessary for employers to hire experts or other staff in response to the rule. Additionally, the final rule does not require employers to hire experts or other staff, so if employers choose to do so, the costs of such would derive from the employer's voluntary action.

9. Costs to State Plan States

The State Policy Network commented that State Plan states would need to update their rules on third-party representation (Document ID 1965, p. 9). While this is true, OSHA-approved State Plans must routinely adopt standards and other regulations in order to remain at least as effective as Federal OSHA, which is a condition of the State Plan's continued existence. See also the discussion of State Plan obligations in Section VIII. State Plans take on a variety of forms and the method for each to adopt a rule varies widely. As a result, OSHA is unable to determine what, if any, opportunity costs are associated with State Plans adopting Federal OSHA rules. The agency believes these activities are already an anticipated part of the State Plan's budget (part of which is provided by the Federal Government) and will not represent spending above a State Plan's established budget.[5]

10. Societal Costs

As explained in the NPRM, this rule does not require the employer make a third party available, nor does it require the employer to pay for that third party's time. 88 FR 59831. There is an opportunity cost to the third party insomuch as their time is being spent on an inspection versus other activities they could be engaged in. Id. This opportunity cost is not compensated by the employer undergoing the OSHA inspection and it is not a monetary burden on that employer. Id.

The American Petroleum Institute (API) commented that it was not reasonable for OSHA to conclude that the rule does not impose costs on employers because that would mean either third-party representatives will provide their services at no cost, or OSHA intends either employees or taxpayers to pay for their time (Document ID 1954, p. 1–2; see also 1091). In an attempt to calculate the cost of compensating third-party representatives for time spent accompanying CSHOs on walkaround inspections, API pointed to OSHA's FY 2022 Congressional Budget Justification, in which OSHA requests $63,500,000 for Compliance Assistance-State Consultation to provide a total of 20,139 visits performed by all Consultation programs (Document ID 1954, p. 2). Based on these data, API concluded that OSHA's cost for providing onsite consultation services is approximately $3,153 per engagement and, ''[u]sing this information as a proxy for third-party walkaround representative(s), participating in 90,000 inspections [per year],'' the cost impact is $238.8 million (Document ID 1954, p. 2).

As an initial matter, this final rule does not require a third-party representative to be selected or participate in an inspection, nor does it require employees or taxpayers to pay for third-party representatives' time. Third-party representatives are generally employees of another organization (*e.g.,* labor union, advocacy group, worker justice coalition, etc.) who are paid by that group. Third-party representatives' job duties would include providing employee representation, assistance, or support during OSHA inspections and in other situations. Therefore, third-party representatives are not paid by the employer under inspection, the employer's employees, or the U.S. Government; rather, they are paid by the organizations that employ them. Similarly, it is not true that OSHA will need to expend resources to train CSHOs on ''new responsibilities'' under the rule (see, *e.g.,* Document ID 1938, p. 10), because any CSHO training will be integrated into existing ongoing training curriculum and not impose any new resource requirements on the agency. Accordingly, OSHA's conclusion that the final rule will not impose direct costs on employers does not mean that employees or taxpayers will bear the cost instead.

Furthermore, API's interpretation of OSHA's FY 2022 Congressional Budget Justification and the application of those figures is incorrect for several reasons. First, the Congressional Budget Justification does not represent the actual budget of the agency and should not be interpreted as such. In this case, the FY 23 budget for State Compliance Assistance programs is $62,661,000—$839,000 less than OSHA's request in FY 22.

Second, some of the budget of the State Consultation program is spent on activities other than the salaries of the consultants. The funding includes the administrative costs of running the program, training and travel costs for the consultants, outreach and educational support, the administration of OSHA's Safety and Health Recognition Program, and other activities. There are no centralized administrative costs of third-party representation. To use the full budget of the State Consultation programs as the numerator in this equation would grossly overstate the costs of a third-party representative's participation by including irrelevant costs.

Third, the activities of an OSHA consultant and a third-party representative are different and not directly comparable. A consultant does work both before the consultation visit and after. They prepare a summary report about their visit and provide follow up services to the employers they are working with. On the other hand, a third-party representative simply accompanies the CSHO during an inspection. Even if one derived a per-engagement cost that stripped out unrelated administrative costs, the consultant would dedicate more hours to each engagement than would a third-party representative.

Finally, it is not correct to assume a third-party representative would participate in every OSHA inspection. While OSHA does not collect data on the frequency of third-party representative participation in OSHA

[5] State Plan participation is voluntary, and states are aware of the requirements—including those to adopt standards and other regulations in order to remain at least as effective as Federal OSHA—before undertaking the process to establish a State Plan. The continued participation by states in the OSHA State Plan program indicates that any costs associated with complying with the requirements of participation do not outweigh the benefits a state anticipates realizing as a result of participation in the program.

inspections, based on anecdotal evidence from CSHOs, employees are more typically represented by another employee during the walkaround inspection. When preparing a regulatory impact analysis, the cost of a rule is measured as incremental costs—the cost to go from the state of the world in the absence of a rule to the state of the world if the rule were promulgated. Under the previous rule, third-party representatives were already permitted to participate in OSHA inspections. So, the incremental costs of the rule would be the additional inspections that third-party representatives will now participate in that they would not have participated in before. OSHA does not collect data on the frequency of third-party participation in inspections and so is unable to determine the number of inspections that would newly involve third-party representatives. But, since this rule clarifies existing rights and does not expand or grant new rights, the number is likely to be very small.

In sum, OSHA does not collect data on the frequency of third-party participation in inspections, nor has the agency attempted to estimate how many inspections a third-party representative might participate in as a result of this rule. Because these data are not available, OSHA acknowledged the existence of, but has not attempted to estimate, societal costs for this analysis. As discussed above, OSHA also acknowledges that there are potentially some unquantified costs of activities that employers may voluntarily undertake as a result of this rule. However, the agency finds that this final rule does not impose any new direct cost burden on employers.

C. Benefits

While there are no new costs borne by employers associated with this final rule, amending section 1903.8(c) will reinforce the benefits of the OSH Act. Third-party representatives—given their knowledge, expertise, or skills with hazardous workplace conditions—can act as intermediaries and improve communication about safety issues between employees and the CSHO. Improved communication can reduce workplace injuries and related costs such as workers' compensation or OSHA fines. As discussed in more detail in Section III, Summary and Explanation, this final rule will enable employees to select trusted and knowledgeable representatives of their choice, which will improve employee representation during OSHA inspections. Employee representation is critical to ensuring OSHA inspections are thorough and effective.

As illustrated by the examples set forth in Section III, Summary and Explanation, this final rule has important benefits on the effectiveness of OSHA's inspections and worker safety and health. Indeed, the record demonstrates that some of these benefits accrue in particular to underserved communities that are likely to benefit from third-party representatives with language or cultural competencies or trusted relationships with workers. These benefits are not the result of actions taken or not taken by employers necessarily, but instead, from the nonquantifiable societal costs of the third-party representatives' time. OSHA has not attempted to quantify these benefits since—unlike injuries avoided and fatalities prevented—they are relatively intangible. Executive Order 12866, as amended by Executive Order 14094, encourages agencies to quantify benefits to the extent reasonably possible, but to articulate them in detail, qualitatively, when they are not. As outlined throughout the preamble, OSHA has provided extensive explanation and information to support the agency's belief that the benefits of the rule, while unquantified, are substantial.

D. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* OSHA examined the regulatory requirements of the final rule to determine if they would have a significant economic impact on a substantial number of small entities. As indicated in Section V, Final Economic Analysis, the final rule may have familiarization costs of approximately $5 per establishment where employers are aware of and decide to read this regulation. The rule does not impose any additional direct costs of compliance on employers, whether large or small. Accordingly, the final rule will not have a significant impact on a substantial number of small entities.

Some commenters, including the Office of Advocacy of the U.S. Small Business Administration and the National Federation of Independent Business, disagreed (see, *e.g.,* Document ID 0047; 0168, p. 6–7; 1774, p. 4–5; 1941, p. 3–6; 1952, p. 5; 5793). For example, the Office of Advocacy of the U.S. Small Business Administration stated that OSHA's certification that the proposed rule would not have a significant impact on a substantial number of small entities was ''improper'' because OSHA failed to provide a ''factual basis'' for certification (Document ID 1941, p. 4).

For the reasons explained in detail above, OSHA estimates that this rule potentially imposes an optional one-time cost for familiarization of approximately $5 per establishment. Otherwise, the rule has no direct requirements for employers and no more than de minimis costs of activities employers may voluntarily undertake as a result of the final rule. The agency considered ''direct and foreseeable costs'' in the NPRM and this final rule and commenters offered nothing more than speculative costs that are neither required by the rule nor are they reasonable activities for employers to undertake. As explained in the NPRM and this final rule, the rule clarifies who can be an authorized representative during OSHA's walkaround inspection. It does not impose new cost burdens on employers or require them to take any action apart from the potential rule familiarization cost of $5 per employer that decides to read it. Therefore, the final rule will not have a significant economic impact on a substantial number of small entities.

For the purposes of illustrating the threshold cost necessary for a rule to have a significant economic impact (costs that are equal to or greater than one percent of revenue), the agency presents the following. Table 1 below shows revenue per average establishment based on 2017 County Business Patterns and Economic Census (the most recent year that reports data at the level necessary to perform this analysis) and the one percent threshold in dollars for selected industries and size classes. OSHA looked at construction, manufacturing, and healthcare as industries that may be more likely to be inspected by OSHA or where there may be higher impacts. The agency also looked at both establishments with fewer than 500 employees (which roughly corresponds to or captures all small entities as defined by the U.S. Small Business Administration) as well as those with fewer than 20 employees, since some construction and healthcare employers are more likely to be very small. The table below also shows the hours that would need to be spent on compliance activities by a supervisor with a loaded wage of about $94 (using the wage of Standard Occupation Classification code 11–1021 General and Operations Managers from the U.S. Bureau of Labor Statistics Occupational Employment and Wage Survey) in order to meet that threshold. Based on these calculations, a small entity would need to dedicate from nearly 100 hours to as many as 2,900 hours to compliance activities in

order to exceed that threshold, depending on the industry. For reference, this is the equivalent of more than two weeks of full-time work (assuming a 40-hour work week) up to one and a half full-time employees dedicating all of their work time to compliance activities. For employers with fewer than 20 employees, those figures range from 35 hours—nearly a full week of work—to more than 1,000 hours—equal to half of one full-time employee's work time in a year.

TABLE 1—HOURS TO REACH SIGNIFICANT ECONOMIC IMPACT, SELECT INDUSTRIES BY NAICS INDUSTRY, <500 EMPLOYEES

NAICS	NAICS description	Establishments	Revenue ($1,000)	Revenue per establishment ($1,000)	1% of revenue per establishment	Manager per hour wages	Hours to exceed 1%
2361	Residential Building Construction	171,322	$253,139,895	$1,478	$14,776	$93.71	158
2362	Nonresidential Building Construction	41,400	324,165,303	7,830	78,301	93.71	836
2371	Utility System Construction	17,634	79,475,796	4,507	45,070	93.71	481
2372	Land Subdivision	4,874	8,476,481	1,739	17,391	93.71	186
2373	Highway, Street, and Bridge Construction	8,971	83,786,185	9,340	93,397	93.71	997
2379	Other Heavy and Civil Engineering Construction.	4,165	14,777,633	3,548	35,481	93.71	379
2381	Foundation, Structure, and Building Exterior Contractors.	92,477	161,721,189	1,749	17,488	93.71	187
2382	Building Equipment Contractors	180,621	321,134,919	1,778	17,779	93.71	190
2383	Building Finishing Contractors	115,503	122,271,617	1,059	10,586	93.71	113
2389	Other Specialty Trade Contractors	69,138	137,034,126	1,982	19,820	93.71	212
311	Food Manufacturing	23,740	174,677,989	7,358	73,580	93.71	785
312	Beverage and Tobacco Product Manufacturing.	8,518	31,557,244	3,705	37,048	93.71	395
313	Textile Mills	1,749	11,059,006	6,323	63,230	93.71	675
314	Textile Product Mills	5,544	10,384,706	1,873	18,731	93.71	200
315	Apparel Manufacturing	5,686	8,368,242	1,472	14,717	93.71	157
316	Leather and Allied Product Manufacturing	1,131	2,775,454	2,454	24,540	93.71	262
321	Wood Product Manufacturing	12,960	50,791,296	3,919	39,191	93.71	418
322	Paper Manufacturing	2,592	37,676,474	14,536	145,357	93.71	1,551
323	Printing and Related Support Activities	24,189	45,426,490	1,878	18,780	93.71	200
324	Petroleum and Coal Products Manufacturing.	1,117	30,652,067	27,441	274,414	93.71	2,928
325	Chemical Manufacturing	9,976	138,356,916	13,869	138,690	93.71	1,480
326	Plastics and Rubber Products Manufacturing.	9,574	82,161,688	8,582	85,818	93.71	916
327	Nonmetallic Mineral Product Manufacturing	11,175	48,381,252	4,329	43,294	93.71	462
331	Primary Metal Manufacturing	3,256	48,567,821	14,916	149,164	93.71	1,592
332	Fabricated Metal Product Manufacturing	50,939	188,740,011	3,705	37,052	93.71	395
333	Machinery Manufacturing	20,542	122,991,169	5,987	59,873	93.71	639
334	Computer and Electronic Product Manufacturing.	10,603	67,937,359	6,407	64,074	93.71	684
335	Electrical Equipment, Appliance, and Component Manufacturing.	4,626	33,346,239	7,208	72,084	93.71	769
336	Transportation Equipment Manufacturing	9,295	87,082,439	9,369	93,687	93.71	1,000
337	Furniture and Related Product Manufacturing.	13,960	36,138,030	2,589	25,887	93.71	276
339	Miscellaneous Manufacturing	26,481	55,483,581	2,095	20,952	93.71	224
611	Educational Services	97,786	137,228,479	1,403	14,034	93.71	150
621	Ambulatory Health Care Services	530,341	602,083,936	1,135	11,353	93.71	121
622	Hospitals	1,712	41,733,980	24,377	243,773	93.71	2,601
623	Nursing and Residential Care Facilities	56,163	113,790,097	2,026	20,261	93.71	216
624	Social Assistance	155,830	145,159,610	932	9,315	93.71	99

Source: OSHA, based on 2017 County Business Patterns and Economic Census.

HOURS TO REACH SIGNIFICANT ECONOMIC IMPACT, SELECT INDUSTRIES BY NAICS INDUSTRY, <20 EMPLOYEES

NAICS	NAICS description	Establishments	Revenue ($1,000)	Revenue per establishment ($1,000)	1% of revenue per establishment	Manager per hour wages	Hours to exceed 1%
2361	Residential Building Construction	166,548	$142,652,292	$857	$8,565	$93.71	91
2362	Nonresidential Building Construction	34,342	83,675,671	2,437	24,365	93.71	260
2371	Utility System Construction	13,854	18,796,751	1,357	13,568	93.71	145
2372	Land Subdivision	4,586	4,394,749	958	9,583	93.71	102
2373	Highway, Street, and Bridge Construction	6,205	13,358,821	2,153	21,529	93.71	230
2379	Other Heavy and Civil Engineering Construction.	3,550	4,180,174	1,178	11,775	93.71	126
2381	Foundation, Structure, and Building Exterior Contractors.	83,239	63,851,419	767	7,671	93.71	82
2382	Building Equipment Contractors	161,010	111,658,403	693	6,935	93.71	74
2383	Building Finishing Contractors	107,882	57,678,342	535	5,346	93.71	57
2389	Other Specialty Trade Contractors	62,284	52,959,403	850	8,503	93.71	91
311	Food Manufacturing	17,010	20,699,769	1,217	12,169	93.71	130
312	Beverage and Tobacco Product Manufacturing.	6,913	7,189,394	1,040	10,400	93.71	111
313	Textile Mills	1,122	1,357,262	1,210	12,097	93.71	129
314	Textile Product Mills	4,685	2,499,124	533	5,334	93.71	57
315	Apparel Manufacturing	4,789	2,306,249	482	4,816	93.71	51

HOURS TO REACH SIGNIFICANT ECONOMIC IMPACT, SELECT INDUSTRIES BY NAICS INDUSTRY, <20 EMPLOYEES—Continued

NAICS	NAICS description	Establishments	Revenue ($1,000)	Revenue per establishment ($1,000)	1% of revenue per establishment	Manager per hour wages	Hours to exceed 1%
316	Leather and Allied Product Manufacturing	922	623,259	676	6,760	93.71	72
321	Wood Product Manufacturing	9,230	9,107,739	987	9,868	93.71	105
322	Paper Manufacturing	1,138	2,503,951	2,200	22,003	93.71	235
323	Printing and Related Support Activities	20,213	11,430,249	565	5,655	93.71	60
324	Petroleum and Coal Products Manufacturing.	488	2,148,587	4,403	44,028	93.71	470
325	Chemical Manufacturing	6,048	14,751,260	2,439	24,390	93.71	260
326	Plastics and Rubber Products Manufacturing.	5,078	8,127,328	1,600	16,005	93.71	171
327	Nonmetallic Mineral Product Manufacturing	6,589	8,840,877	1,342	13,418	93.71	143
331	Primary Metal Manufacturing	1,806	3,595,790	1,991	19,910	93.71	212
332	Fabricated Metal Product Manufacturing	36,783	34,117,477	928	9,275	93.71	99
333	Machinery Manufacturing	13,539	18,377,762	1,357	13,574	93.71	145
334	Computer and Electronic Product Manufacturing.	7,057	10,239,147	1,451	14,509	93.71	155
335	Electrical Equipment, Appliance, and Component Manufacturing.	3,011	4,501,315	1,495	14,950	93.71	160
336	Transportation Equipment Manufacturing	5,847	9,466,353	1,619	16,190	93.71	173
337	Furniture and Related Product Manufacturing.	11,211	7,486,646	668	6,678	93.71	71
339	Miscellaneous Manufacturing	22,726	14,022,304	617	6,170	93.71	66
621	Ambulatory Health Care Services	446,980	289,281,532	647	6,472	93.71	69
622	Hospitals	118	1,144,688	9,701	97,007	93.71	1,035
623	Nursing and Residential Care Facilities	21,683	9,296,715	429	4,288	93.71	46
624	Social Assistance	99,490	32,772,130	329	3,294	93.71	35

Source: OSHA, based on 2017 County Business Patterns and Economic Census.

OSHA estimates for the cost of compliance with a rule assume that employers will take the most rational, lowest-cost option to comply. It is well known that OSHA only inspects a small fraction of workplaces in a given year and most businesses will never be subject to an OSHA inspection.[6] Only a small subset of those worksites inspected annually will have a third-party representative accompanying the CSHO because of the revisions to this final rule. While OSHA does not generally establish a threshold for what is considered a ''substantial number of small entities,'' other agencies in the Department of Labor, including the Employment and Training Administration and the Wage and Hour Division, define a substantial number to be more than 15 percent (see 80 FR 62957, 63056; 79 FR 60634, 60718). Commenters did not present any reasonable argument that a substantial number of employers (much less a substantial number of small employers) would dedicate a week or more to activities not required by OSHA for an inspection that only has a very small chance of occurring. Again, apart from the rule familiarization cost of $5 per employer that chooses to read it, OSHA finds that employers will incur no direct costs because of this rule. However, even if OSHA were incorrect in estimating that there were no such additional direct costs, this analysis shows that it is not reasonable to assume that such costs would have a significant economic impact. Therefore, OSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

E. Small Business Regulatory Enforcement Fairness Act

OSHA did not convene a Small Business Advocacy Review panel under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Chamber of Commerce asserted that OSHA failed to comply with requirements under SBREFA (Document ID 1952, p. 4–5). The Employers Walkaround Representative Rulemaking Coalition recommended that OSHA voluntarily establish a Small Business Advocacy Review (SBAR) panel to receive input directly from small businesses (Document ID 1976, p. 26).

OSHA considers the possibility of disproportionate impact on small businesses when deciding whether a SBAR panel is warranted. As explained above, because OSHA preliminarily determined that the proposed rule would not result in a significant economic impact on a substantial number of small entities (see 88 FR 59831), OSHA determined that a SBAR panel was not required. Nothing in the record has disturbed OSHA's preliminary determination that this rule will not have a significant economic impact on a substantial number of small entities, nor did OSHA's threshold calculations indicate that the preliminary determination was incorrect. Therefore, OSHA has concluded that a SBAR panel was not required for this rule.

VI. Office of Management and Budget (OMB) Review Under the Paperwork Reduction Act

This rule for Worker Walkaround Representative Designation Process contains no collection of information requirements subject to OMB approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320. The PRA defines a collection of information as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.'' 44 U.S.C. 3502(3)(A). Under the PRA, a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it, and the agency displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the

[6] As mentioned previously, the average employer has a 0.43 percent chance of being inspected by OSHA annually. At the current rate of inspection and enforcement staffing levels, it would take OSHA more than 100 years to inspect every covered workplace one time. See Commonly Used Statistics, *available at https://www.osha.gov/data/commonstats.*

collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

VII. Federalism

OSHA reviewed this final rule in accordance with the Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)), which, among other things, is intended to ''ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies.''

Several commenters submitted cover letters and attached a report from the Boundary Line Foundation (Boundary Line document) expressing a concern that OSHA failed to conduct consultation with States adequate to comply with Executive Order 13132 (see, *e.g.,* Document ID 1965; 1967; 1968; 1973, 1975). The Boundary Line document also argues that OSHA's rulemaking process ''neglects to assess foreseeable impacts to State legislative or regulatory actions or consider alternatives that can only be revealed through the State consultation process'' (see, *e.g.,* Document ID 1965, p. 5–9; 1975, p. 5–9; 1968, p. 5–9).[7] OSHA disagrees.

In fact, the Boundary Line document, along with several State comments that reference this document, set out a number of alternatives, including not making the proposed changes or providing a more specific set of criteria to be referenced by the CSHOs (Document ID 1965, p. 11, 15–16, 21, 30; 1967; 1968; 1973, 1975). OSHA has considered and discussed those alternatives but did not select them for the reasons fully explained in the Summary and Explanation.

After analyzing this action in accordance with Executive Order 13132, OSHA determined that this regulation is not a ''policy having federalism implications'' requiring consultation under Executive Order 13132. This final rule merely clarifies OSHA's longstanding practice under which third-party representatives may accompany inspectors conducting workplace safety and health inspections authorized by the OSH Act. It will not have 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 that would affect the States' ability to discharge traditional State governmental functions.

The effect of the final rule on States and territories with OSHA-approved occupational safety and health State Plans is discussed in Section VIII, State Plans.

VIII. State Plans

As discussed in the Summary and Explanation section of this preamble, this final rule revises the language in OSHA's Representatives of Employers and Employees regulation, found at 29 CFR 1903.8(c), to explicitly clarify that the representative(s) authorized by employees may be an employee of the employer or a third party for purposes of an OSHA walkaround inspection. Additionally, OSHA clarified that when the CSHO has good cause to find that a representative authorized by employees who is not an employee of the employer would aid in the inspection, for example because they have knowledge or experience with hazards in the workplace, or other skills that would aid the inspection, the CSHO may allow the employee representative to accompany the CSHO on the inspection.

Among other requirements, section 18 of the OSH Act requires OSHA-approved State Plans to enforce occupational safety and health standards in a manner that is at least as effective as Federal OSHA's standards and enforcement program, and to provide for a right of entry and inspection of all workplaces subject to the Act that is at least as effective as that provided in section 8 (29 U.S.C. 667(c)(2)–(3)). As described above and in the Summary and Explanation of this preamble, OSHA concludes that these clarifying revisions enhance the effectiveness of OSHA's inspections and enforcement of occupational safety and health standards. Therefore, OSHA has determined that, within six months of the promulgation of a final rule, State Plans are required to adopt regulations that are identical to or ''at least as effective'' as this rule, unless they demonstrate that such amendments are not necessary because their existing requirements are already ''at least as effective'' in protecting workers as the Federal rule. See 29 CFR 1953.4(b)(3).

Several commenters representing state and local governments (but not State Plan officials) submitted similar comments and included the Boundary Line document. The Boundary Line document questioned OSHA's application of section 18(c)(2) (29 U.S.C. 667(c)(2)) to State Plans' obligations with respect to this rulemaking (see Document ID 1965, p. 10–11; 1967, p. 10–11; 1968, p. 10–11; 1975, p. 10–11). (The report incorrectly cites 29 U.S.C. 677(c)(2), but this appears to be a typographical error.) Section 18(c)(2) of the OSH Act provides that one condition of OSHA approval is that a State Plan ''provides for the development and *enforcement* of safety and health standards . . . which standards (*and the enforcement of which* standards) are or will be at least as effective in providing safe and healthful employment and places of employment'' (emphasis added). Because this rule enhances the effectiveness of the enforcement of OSHA standards, section 18(c)(2) applies.

The same document also questioned the impact of this rulemaking on State Plans' obligations to develop strategic plans (Document ID 1965, p. 9; 1967, p. 9; 1968, p. 9; 1975, p. 9). OSHA requires State Plans to submit 5-year strategic plans as a condition of receiving Federal funding grants pursuant to section 23(g) of the OSH Act (29 U.S.C. 672). This is distinct from State Plans' statutory obligations under section 18 of the OSH Act to maintain at least as effective enforcement programs and inspections. Although a State Plan's 5-year strategic plan might reference rulemaking obligations, OSHA is not prescriptive about whether specific rulemakings would need to be listed in such strategic plans.

Of the 29 States and Territories with OSHA-approved State Plans, 22 cover both public and private-sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The remaining seven States and Territories cover only state and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands.

IX. Unfunded Mandates Reform Act

OSHA reviewed this proposal according to the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*). As discussed above in Section V of this preamble, the agency preliminarily determined that this proposal would not impose costs on any private- or public-sector entity. Accordingly, this proposal would not require additional expenditures by either public or private employers.

As noted above, the agency's regulations and standards do not apply to State and local governments except in

[7] Some of these commenters request that OSHA withdraw the rulemaking to complete ''its obligation'' to consult with states, ignoring section 11 of E.O. 13132 which specifies that the E.O. does not ''create any right or benefit, substantive or procedural enforceable at law.'' (64 FR 43255, 43259).

States that have elected voluntarily to adopt a State Plan approved by the agency. Consequently, this proposal does not meet the definition of a ''Federal intergovernmental mandate.'' See section 421(5) of the UMRA (2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, the agency certifies that this proposal would not mandate that State, local, or Tribal governments adopt new, unfunded regulatory obligations. Further, OSHA concludes that the rule would not impose a Federal mandate on the private sector in excess of $100 million (adjusted annually for inflation) in expenditures in any one year.

X. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it would not have ''tribal implications'' as defined in that order. The clarifications to 29 CFR 1903.8(c), do not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

XI. Environmental Impact Assessment

OSHA reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), and the Department of Labor's NEPA procedures (29 CFR part 11). The agency finds that the revisions included in this proposal would have no major negative impact on air, water, or soil quality, plant or animal life, the use of land or other aspects of the environment.

XII. List of Subjects in 29 CFR Part 1903

Occupational safety and health, Health, Administrative practice and procedures, Law enforcement.

XIII. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this document pursuant to 29 U.S.C. 657; 5 U.S.C. 553; Secretary of Labor's Order 8–2020, 85 FR 58393 (2020).

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble, OSHA is amending 29 CFR part 1903 to read as follows:

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

■ 1. The authority citation for part 1903 is revised to read as follows:

Authority: 29 U.S.C. 657; Secretary of Labor's Order No. 8–2020 (85 FR 58393); and 5 U.S.C. 553.

■ 2. Revise paragraph (c) of § 1903.8 to read as follows:

§ 1903.8 Representatives of employers and employees.

* * * * *

(c) The representative(s) authorized by employees may be an employee of the employer or a third party. When the representative(s) authorized by employees is not an employee of the employer, they may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).

* * * * *

[FR Doc. 2024–06572 Filed 3–29–24; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL REGISTER

Vol. 89 Monday,
No. 63 April 1, 2024

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2024–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2024–04; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2024–04. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

RULES LISTED IN FAC 2024–04

Subject	FAR case	Analyst
Establishing Federal Acquisition Regulation Part 40	2022–010	Jones.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2024–04 amends the FAR as follows:

Establishing Federal Acquisition Regulation Part 40 (FAR Case 2022–010)

This final rule amends the Federal Acquisition Regulation (FAR) to add the framework for a new FAR part on information security and supply chain security. The new FAR part will be used to prescribe policies and procedures for managing information security and supply chain security when acquiring products and services. The creation of this new FAR part does not implement any of the information security and supply chain security policies or procedures. Relocation of the related existing policies or procedures will be done through separate rulemaking.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2024–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2024–04 is effective April 1, 2024 except for FAR Case 2022–010, which is effective May 1, 2024.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive/Deputy CAO, National Aeronautics and Space Administration.

[FR Doc. 2024–06410 Filed 3–29–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 40

[FAC 2024–04; FAR Case 2022–010, Docket No. FAR–2022–0010, Sequence No. 1]

RIN 9000–AO47

Federal Acquisition Regulation: Establishing Federal Acquisition Regulation Part 40

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add the framework for a new FAR part on information security and supply chain security. The creation of this new FAR part does not implement any of the information security and supply chain security policies or procedures. The amendment simply establishes the new FAR part.

DATES: Effective May 1, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Malissa Jones, Procurement Analyst, at 571–882–4687, or by email at *Malissa.Jones@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2024–04, FAR Case 2022–010.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to add the framework for a new FAR part 40, which will contain the policies and procedures for managing information security and supply chain security when acquiring products and services. The creation of this new FAR part does not implement any of the policies or procedures related to managing information security and supply chain security. The rule simply establishes the new FAR part. Relocation of the related existing policies or procedures will be done through separate rulemaking.

Currently, the policies and procedures for prohibitions, exclusions, supply chain risk information sharing, and safeguarding information that address security objectives are dispersed across multiple parts of the FAR, which makes it difficult for the acquisition workforce to locate, understand, and implement applicable requirements. This new part will provide contracting officers with a single, consolidated location in the FAR that addresses their role in implementing requirements related to managing information security and supply chain security when acquiring products and services. This is also helpful to contractors who may want to review the information security and supply chain security policies and procedures in FAR part 40.

This part will provide a location to cover broad security requirements that apply across acquisitions. These include security requirements designed to bolster national security through the management of existing or potential adversary-based supply chain risk across technological, intent-based, or economic means (*e.g.,* cybersecurity supply chain risks, foreign-based risks,

emerging technology risks). The new FAR part 40 would be structured based on the objectives of the regulation (similar to the way environmental objectives are covered in part 23 and labor objectives are addressed in part 22). Security-related requirements that include, but are not limited to, information and communications technology (ICT) will be covered in FAR part 40. An example of security-related requirements that include, but are not limited to, ICT are the security-related requirements from section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232). Security-related requirements that only apply to ICT acquisitions will continue to be covered in part 39.

Supply chain and information risks that are unrelated to security risks are covered in other parts of the FAR (*e.g.,* part 22 for labor and human trafficking risks and part 23 for climate-related risks).

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it is only establishing a framework for a new FAR part and does not implement any policies or procedures that apply to the public. This rule only affects the internal operating procedures of the Government and without a significant cost or administrative impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, or Commercial Services

This rule does not create new solicitation provisions or contract clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Part 40

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR chapter 1 by adding part 40 to read as follows:

PART 40—INFORMATION SECURITY AND SUPPLY CHAIN SECURITY

Sec.
40.000 Scope of part.
Subpart 40.1—[Reserved]
Subpart 40.2—[Reserved]
Subpart 40.3—[Reserved]

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

40.000 Scope of part.

(a) This part addresses broad security requirements that apply to acquisitions of products and services. It prescribes policies and procedures for managing information security and supply chain security when acquiring products and services that include, but are not limited to, information and communications technology (ICT).

(b) See part 39 for security-related policies and procedures that only apply to ICT.

(c) See parts 4, 24, and 46 for additional policies and procedures related to managing information security and supply chain security.

(d) Information and supply chain policies and procedures that are unrelated to security are covered in other parts of the FAR (*e.g.,* part 22 for labor and human trafficking risks and part 23 for climate-related risks).

Subpart 40.1—[Reserved]

Subpart 40.2—[Reserved]

Subpart 40.3—[Reserved]

[FR Doc. 2024–06411 Filed 3–29–24; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2024–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2024–04; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the

Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2024–04, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2024–04, which precedes this document.

DATES: April 1, 2024.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2024–04 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2024–04

Subject	FAR case	Analyst
Establishing Federal Acquisition Regulation Part 40.	2022–010	Jones.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document preceding this summary. FAC 2024–04 amends the FAR as follows:

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William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–06412 Filed 3–29–24; 8:45 am]

BILLING CODE 6820–EP–P

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